

Case No: S.E. 4667

Applicant: Presidential Care,  
LLC/Stoddard Baptist Home,  
Inc.

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

ZONING ORDINANCE NO. 3 - 2016

AN ORDINANCE, conditionally approving Special Exception 4667 and Tree Conservation Plan 003-14, for permission to operate an Adult Day Care for 15 persons and a 63-unit Assistant Living Facility for 78 persons on approximately 7.91 acres of R-R (Rural Residential) zoned land located on the east side of Lottsford Vista Road, across from its intersection with Cleary Lane, also identified as 3911 Lottsford Vista Road, Bowie, Maryland, in Councilmanic District 5.

PROCEDURAL AND FACTUAL BACKGROUND<sup>1</sup>

In 1990, the District Council rezoned the subject property from the R-E (Residential Estate) Zone to the R-R (Rural Residential) Zone. *See* 1990 Largo-Lottsford Master Plan and Sectional Map Amendment; Ex. 17 – Tech Staff Rept., p. 5.

In 1997, at the request of then applicant Mr. William Youngblood, the District Council enacted Zoning Ordinance No. 7-2001, which conditionally approved Special Exception 4256 for a 160-child day care center, 40-person adult day care center, and a 72-person congregate living facility with future expansion of four additional buildings, which was never developed. We note

---

<sup>1</sup> We have jurisdiction to issue the final decision in this contested application for a special exception. *See* Md. Code, Land Use Art., Titles 22 and 25 and Prince George's County Code Sections 27-131–35. *See also County Council v. Curtis Regency Serv. Corp.*, 121 Md. App. 123, 708 A.2d 1058 (1998).

however that prior to our approval of S.E. 4256, the site was improved with a 12-person congregate living facility building. *See* Zoning Ordinance No. 7-2001; Ex. 17, p. 4.

In 2013, Planning Board adopted PGCPB Resolution No. 13-82, which conditionally approved Applicant's Type I Tree Conservation Plan, Preliminary Plan of Subdivision 4-12020, Sycamore Hill Assisted Living, including a Variance to PGCC § 25-122(b)(1)(G) for 1 parcel to develop the subject property for a 15-person adult day care facility and a 63-unit (15 double-occupant units and 48 single-occupant units) assisted living facility. PGCPB Resolution No. 13-82 requires that prior to building permit Applicant must obtain approval of a Detailed Site Plan in accordance with Part 3, Division 9, of the Zoning Ordinance. *See* PGCPB Resolution No. 13-83, pp. 5–7.

In February 2014, applicant Presidential Care, LLC/Stoddard Baptist Home, Inc., filed a new application for Special Exception (S.E. 4667) to request approval to operate a 15-person adult day care facility and a 63-unit (15 double-occupant units and 48 single-occupant units) assisted living facility.<sup>2</sup> *See* Ex. 3a – Application Form.

In April 2014, the Zoning Review Division of the Development Review Division of Planning Department transmitted its Technical Staff Report to Planning Board. Technical Staff recommended conditional approval of S.E. 4667. *See* Ex. 17. Subsequently in May, Planning Board elected not to conduct its own public hearing on S.E. 4667, but instead adopted staff's recommendation. *See* Ex. 21.

---

<sup>2</sup> S.E. 4667 supercedes S.E. 4256. *See* PGCC § 27-323(a) (All alterations, enlargements, extensions or revisions of Special Exception uses (including enlargements in land area and area of improvements, revisions of a site plan and in the configuration of land area, and extensions of time) shall require the filing and approval of a *new* application for the applicable Special Exception use)) (emphasis added).

In July 2014, the Zoning Hearing Examiner (ZHE) conducted a public hearing to consider S.E. 4667 in accordance with the requirements of the Prince George's County Code. *See* (7/2/2014, Tr.).

In October 2014, the ZHE conditionally recommended approval of S.E. 4667. *See* ZHE's Disposition Recommendation, 10/15/14. Subsequently that month, the District Council took no action on S.E. 4667.

In November 2014, persons of record appealed to the District Council. *See* Notice of Appeal from Willow Grove Citizens Association, 11/14/14 and Notice of Appeal from Ms. Tiffany Alston Gray, 11/14/14.

In March 2015, the Clerk of the County Council sent notices of oral argument to all persons of record that oral argument would be rescheduled to April 27, 2015. *See* Notice, 3/26/15.

In April 2015, the District Council held oral arguments on the proposed special exception application. At the conclusion of oral argument, Council took S.E. 4667 under advisement.

In May 2015, the District Council remanded S.E. 4667 to the ZHE. *See* Order of Remand, 5/4/15.

In June 2015, the ZHE conducted a public hearing, on remand, to consider S.E. 4667 in accordance with the requirements of the Prince George's County Code. *See* (6/18/2015, Tr.).

In August 2015, the ZHE, on remand, conditionally recommended approval of S.E. 4667. *See* ZHE's Disposition Recommendation, 8/5/15. Subsequently that month, the District Council took no action on S.E. 4667.

In September 2015, persons of record appealed to the District Council. *See* Notice of Appeal from Willow Grove Citizens Association, 9/4/15 and Notice of Appeal from Ms. Tiffany

Alston, 9/4/15. Subsequently, the District Council also elected to make the final decision in S.E. 4667.

In November 2015, the District Council held oral arguments on the proposed special exception application. At the conclusion of oral argument, Council took S.E. 4667 under advisement.

In February 2016, S.E. 4667 was placed on the Zoning Agenda for final action. *See* Zoning Agenda, 2/8/16.

### FINDINGS AND CONCLUSIONS<sup>3</sup>

#### The Property

The subject property is an irregularly shaped parcel improved with a vacant structure formerly used as a dwelling and as a Congregate Living Facility for 12 elderly or physically disabled residents. *See* Exhibits 3(b) and 17. The property slopes from a high elevation of 190± feet to the northwest to an elevation of 140±feet along its southern property line. This elevation change requires extensive grading of the building and parking areas, while leaving the remainder of the site with steep slopes. Applicant will construct a stormwater management pond along the southern portion of the site that abuts Lottsford Vista Road.

#### Neighborhood and Surrounding Uses

The subject property is surrounded by the following uses:

---

<sup>3</sup> Except as otherwise stated herein, the District Council adopts the findings of facts and conclusions of law within the disposition recommendation of the Zoning Hearing Examiner. *See Templeton v. County Council of Prince George's County*, 23 Md. App. 596; 329 A.2d 428 (1974) (Where the Council has delegated the duty of making findings of fact and recommendations to the Zoning Hearing Examiner, the Council may comply with the requirement of "specific written findings of basic facts and conclusions of law" by adopting the Examiner's findings and conclusions). The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision. *See* PGCC § 27-141. *See also* Rules of Procedure for the Prince George's County District Council: Rule 6: Oral Argument and Evidentiary Hearings: (f) The District Council may take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. The District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.

North: Single-family detached dwellings in the R-R zoned Vista Estates East (Vista Glen) Subdivision

South and East: Public parkland in the Folly Branch Stream Valley Park

West: Lottsford Vista Road

The neighborhood has the following boundaries:

North: John Hanson Highway (US 50)

South: The Enterprise Farm

East: Folly Branch

West: Bald Hill Branch

#### Master Plan, Sectional Map Amendment and General Plan

The 1990 Largo-Lottsford Master Plan and Sectional Map Amendment recommended residential uses for the property.<sup>4</sup> The 2002 General Plan places the property in the Developing Tier. The 2014 General Plan (“Plan 2035”) places the property within the Established Communities Policy Area.

#### Applicant’s Request

Applicant, Presidential Care, LLC, is affiliated with Stoddard Baptist Home Foundation. See (7/2/2014, Tr., pp. 5–7). Applicant requests approval to operate a 78-bed assisted living facility

---

<sup>4</sup> Despite the 1990 Plan recommendation that the property should be used for residential purposes, an adult day care and adult living facility are permitted uses by special exception in the R-R Zone. A special exception, sometimes called a “conditional use,” is a zoning device that provides a middle ground between permitted and prohibited uses. *People’s Counsel for Baltimore Cnty. v. Loyola Coll. in Maryland*, 406 Md. 54, 71, 71 n.19, 956 A.2d 166, 176, 176 n.19 (2008); cf. *Maryland Overpak Corp. v. Mayor And City Council Of Baltimore*, 395 Md. 16, 29, 909 A.2d 235, 243 (2006) (citing *Lucas v. People’s Counsel for Baltimore County*, 147 Md. App. 209, 227 n.20, 807 A.2d 1176, 1186 n.20 (2002)). It allows the local legislature to set some uses as *prima facie* compatible for a given zone, subject to a case-by-case evaluation to determine whether the use would result in an adverse effect on the neighborhood (other than any adverse effect inherent in that use within the zone), such that would make the use actually incompatible. Because special exceptions are created legislatively, they are presumed to be correct and an appropriate exercise of the police power. *Rylins Enterprises*, 372 Md. at 543, 814 A.2d at 486 (citing *Brandywine Enterprises, Inc. v. Prince George’s County Council*, 117 Md. App. 525, 700 A.2d 1216 (1997)).

with 63 bedrooms for individuals generally 60 years old and older in need of physical and general medical assistance and an Adult Day Care Facility for fifteen (15) elderly or disabled persons. *Id.* 77–79. Both uses will operate in the same 65,608 square foot building, in separate “villages.” The 78 residents in the Assisted Living Facility will be housed in 15 double-occupant units and 48 single-occupant units. The Adult Day Care facility will share an entrance with the assisted living facility but will then be housed within its own area. *See* Exhibits 17 and 41. Both uses are permitted by Special Exception in the R-R Zone. However, PGCC § 27-441(b)(2), fn. 77 places a further limitation on assisted living facilities:

Up to seventy-five (75) dwelling units are permitted only if adjoining and operated by the same organization as an adult day care use, approved by Special Exception. All assisted living facilities standards and requirements in Part 6, Division 5, must be met, including Detailed Site Plan approval under Part 3, Division 9.

Applicant intends to raze the existing 6,378 square foot vacant, one-story congregate living facility and replace it with a 65,608 square foot 2-story building with a full basement, and 49 parking spaces and one loading space to accommodate both uses. *See* Exhibit 17, p. 26. Applicant submitted architectural elevations for the two-story building, and floor plans. *See* Exhibits 6(b) and 41(a)-b). Applicant also submitted its program descriptions for both uses. Applicant intends to provide a host of services, including, but not limited to:

- Specialized Alzheimer’s /dementia care
- 24-hour nursing care
- Housekeeping and linen service
- A Beauty/Barber shop
- A community room for social gatherings, meetings, event and activities
- Library and reading rooms
- Dining rooms and a computer room

The residents and clients will also be able to enjoy a covered pavilion near the entrance for picnics and other outdoor activities. There will be trellises, walkways and patios. An aquatic exercise program will also be provided. *See* PGCC §§ 27-332 and 27-464.04; Exhibits 4 and 6(a).

Applicant explained the differences between what is proposed and what was approved in S.E. 4256:

Going back into the history we purchased the property from [the prior owners] .... When we started to actually talk to people, construction companies and other development experts, we found out that it would be very, very difficult and very intrusive to the land and to the neighborhood in terms of how to build that property, it would have taken about 4 or 5 million dollars just to move the land around. There are a lot of retaining walls that were going to be needed, the property would have been very congested with all these variety of different buildings....

We feel the new proposal meets the needs of the many, the consumers that may use it or just drive by it every day. We feel that it's a building that fits neatly into the topography of the land and reflects the character of the neighborhood. It is broken up into several villages under one roof, the previous one had several buildings that were spread all over the campus.... It has very attractive common spaces that will increase the community connection and these spaces will also be available for public use and community use if the community chooses. The units will be far more spacious, they'll be larger and there will be more space for internal and external recreation ... and we also feel over time, the building will ... blend totally into the community when the landscaping plan matures....

*See* (7/2/2014, Tr., pp. 8–10).

Applicant expects to employ approximately 100 employees – 45 full-time and 55 part-time. *See* (7/2/2014, Tr., pp. 12–13). The employees will be spread over three shifts, and “will be specifically trained for dementia related programs.” *Id.* at 13. Applicant noted that its goal for the Adult Day Care is to promote “independence, dignity and quality of life” by offering “the right combination of social, creative, fitness and health activities to keep its residents/clients physically active and socially engaged ....” *See* Exhibit 6(a), p. 16. The occupants/clients at the site are the aged who are unable to live independently. A driver will be available for those Adult Day Care clients that are not dropped off at the facility, and for those residents in need of chauffeuring to and from medical, and other, appointments. *See* (7/2/2014, Tr., pp. 14–15).

Remand

Based on issues raised by Citizen Opposition in their appeals and at oral argument when we first considered S.E. 4667, we were persuaded by opposition concerns. We remanded S.E. 4667 to the ZHE to reopen the record; conduct a public hearing or hearings to receive, and evaluate additional testimony and evidence, as follows:

1. The ZHE shall allow Applicant the opportunity to submit the necessary information as to its corporate status in Maryland into the administrative record for S.E. 4667.
2. Determine if the applicant, “Presidential Care, LLC” is in good standing with the State Department of Assessment and Taxation (SDAT). If the applicant is not in good standing and has merged with another entity, the proper applicant registered with SDAT shall provide a letter of good standing from the new entity before issuance of a new or revised disposition recommendation. The new or revised disposition recommendation shall also reflect the proper name and address, if any, of the applicant in this case.
3. Determine if the applicant, “Stoddard Baptist Home, Inc.,” is in good standing with SDAT. If the applicant is not in good standing and has merged with another entity, the property owner shall provide a letter of good standing from the new entity before issuance of a new or revised disposition recommendation. The new or revised disposition recommendation shall also reflect the proper name and address, if any, of the applicant in this case.
4. After Applicant has submitted the evidence regarding its corporate status in Maryland on remand, the Zoning Hearing Examiner shall permit the Citizens Opposition to submit additional evidence to the administrative record concerning expert testimony and/or expert reports concerning the stated issues of traffic and transportation related to the proposed development on the subject property. *See* Order of Remand, 5/4/15.

ZHE Remand Decision

On remand, the ZHE recommend re-approval of S.E. 4667. *See* ZHE’s Remand Disposition Recommendation, 8/5/15.

Appeals on Remand



- Corporate Status of Applicant(s)

Citizen Opposition argues that S.E. 4667 should be denied because Presidential Care, LLC (Presidential), a Maryland corporation, and Stoddard Baptist Home, Inc. (Stoddard), a foreign corporation, could not be combined applicants in S.E. 4667 since, according to the opposition, Presidential, not Stoddard, is the applicant who filed the application for S.E. 4667. Citizen Opposition also argues that S.E. 4667 should be denied because 1) the corporate charter of Presidential was forfeited at the time the application for S.E. 4667 was filed and 2) Stoddard, if considered an applicant at the S.E. 4667 was filed, was not a registered foreign corporation in Maryland. *See* Notices of Appeal from Willow Grove Citizens Association, 9/4/15 and Ms. Tiffany Alston, 9/4/15. We disagree.

Based on our review of the relevant provisions of Md. Code Ann., Corp. & Ass'ns (2014, Supp. 2015), the prior corporate status of Presidential and Stoddard, which we consider to be one of the same at the time the application for S.E. 4667 was filed, neither voids the filing of S.E. 4667 nor divest us of jurisdiction to consider whether to grant S.E. 4667. Even if we considered Presidential and Stoddard to be different corporate entities when S.E. 4667 was filed, it is undisputed that both entities filed the application for S.E. 4667. *See* Ex. 3(a). Further, under Maryland law, the prior corporate status of Presidential and Stoddard does not void the filing of the application for S.E. 4667 or divest us of jurisdiction to consider whether to grant S.E. 4667.

- Corporate Status

Presidential is a registered Maryland limited liability company, which was previously forfeited but has been reinstated and is in good standing with the Maryland Department of Assessment and Taxation (SDAT)—prior to both the ZHE's remand decision and our final decision. *See* Ex. R-6(b). According to SDAT, *since the formation of Presidential, the company*

*continues to have only a single member, namely Stoddard Baptist Home, Inc., and the sole purpose of the company has always been and continues to be to operate as a charitable organization. Stoddard has been qualified, since June 2, 2015, with Maryland Department of Assessment and Taxation, to be a corporation duly incorporated and existing under the laws of the District of Columbia and duly authorized to exercise all powers in its charter and to transact interstate, intrastate and foreign business in Maryland. See Ex. R-6(c) (emphasis added).*

- Presidential

It is undisputed that Presidential is a limited liability company in Maryland. Upon its formation, a limited liability company may conduct *activities* in any state related to any lawful business, purpose, investment, or activity, whether or not for profit. *See Corp. & Ass'ns*, §§ 4A-201. A limited liability company also has the general powers, whether or not set forth in its articles of organization or operating agreement, to:

(1) Have perpetual existence, although existence may be limited to a specified period of time if the limitation is set forth in its articles of organization; (2) Sue, be sued, complain, and defend in all courts; (3) *Transact its business, carry on its operations, and have and exercise the powers granted by this article in any state and in any foreign country*; (4) *Make contracts and guarantees, incur liabilities, and borrow money*; (5) *Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets*; (6) *Acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located*; (7) Issue notes, bonds, and other obligations and secure any of them by mortgage or deed of trust or security interest of any or all of its assets; (8) *Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of other corporations, associations, general or limited partnerships, limited liability companies, foreign limited liability companies, business trusts, and individuals*; (9) Invest its surplus funds, lend money in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes of the limited liability company, and take and hold real property and personal property as security for the payment of funds so loaned or invested; (10) Render professional services within or without this State; (11) Elect or appoint agents and define their duties and fix their compensation; (12) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and

assets; (13) *Be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, limited liability company, foreign limited liability company, joint venture, trust, or other enterprise*; (14) Indemnify and hold harmless any member, agent, or employee from and against any and all claims and demands, except in the case of action or failure to act by the member, agent, or employee which constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement; (15) Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of this State, for the administration and regulation of the affairs of the limited liability company; (16) Cease its activities and dissolve; and (17) Do every other act not inconsistent with law which is appropriate to promote and attain the purposes of the limited liability company. *See Corp. & Ass'ns, §§ 4A-203 (emphasis added).*

The forfeiture of the charter of the limited liability company does not impair the validity of a contract *or act of the limited liability company entered into or done either before or after the forfeiture*, or prevent the limited liability company from defending any action, suit, or proceeding in a court of this State. *See Corp. & Ass'ns, §§ 4A-920 (emphasis added).*

Therefore, we find that Presidential was legally authorized to engage in the *activity* of filing an application for a special exception concerning real or personal property—either on its own behalf or on the behalf of Stoddard. *See Corp. & Ass'ns, §§ 4A-201, 4A-203.* We also find that under Maryland law, the forfeited corporate status of Presidential, at the time S.E. 4667 was filed, does not impair the validity of a contract *or act of the limited liability company entered into or done either before or after the forfeiture.* *See Corp. & Ass'ns, §§ 4A-920.*

- Stoddard

In addition to any other activities which may not constitute doing business, *the following activities of a foreign limited liability company do not constitute doing business in Maryland:*

- (1) *Maintaining, defending, or settling an action, suit, claim, dispute, or administrative or arbitration proceeding;*
- (2) Holding meetings of its members or agents or carrying on other activities that concern its internal affairs;
- (3) Maintaining bank accounts;

- (4) Conducting an isolated transaction not in the course of a number of similar transactions;
- (5) Foreclosing mortgages and deeds of trust on property in this State;
- (6) As a result of default under a mortgage or deed of trust, acquiring title to property in this State by foreclosure, deed in lieu of foreclosure, or otherwise;
- (7) *Holding, protecting, renting, maintaining, and operating property in this State so acquired*; or
- (8) Selling or transferring title to property in this State so acquired to any person, including the Federal Housing Administration or the Veterans Administration. *See Corp. & Ass'ns*, § 4A-1009(a).

Because Stoddard was not doing business in Maryland when S.E. 4667 was filed, it was and is legally authorized to maintain S.E. 4667 before the District Council.<sup>5</sup> Moreover, the failure of Stoddard, a foreign limited liability company, to register in this State does not impair the validity of a contract or *act* of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in a court of this State. *See Corp. & Ass'ns*, § 4A-1007(b).

- Environmental Issues

Willow Grove Citizens Association indicates that S.E. 4667 should be denied because of a number of environmental concerns. We disagree. The Association does not provide any evidence to support why the environmental concerns listed in their appeal warrants a denial of S.E. 4667. *See* Notice of Appeal from Willow Grove Citizens Association, 9/4/15. To the contrary, based on our review of the record, there is substantial evidence in the record which persuades that the

---

<sup>5</sup> The District Council sits as an administrative agency when reviewing a zoning matter. *See County Council v. Brandywine Enterprise.*, 350 Md. 339, 711 A.2d 1346 (1998) (“The Regional District Act authorizes the County Council to sit as a district council in zoning matters, and, when it does so, it is acting as an administrative agency”); *County Council v. Carl M. Freeman Assocs.* 281 Md. 70, 376 A.2d 869 (1973) (“When it sits as the district council in a zoning matter, the Prince George’s County Council is an ‘administrative agency’ as the term is broadly defined”). *See also* Maryland Code (2012 & Supp. 2015, *as amended by* Chapter 365, 2015 Laws of Maryland), Land Use Article § 14-101(f) and § 22-101(b) (“LU”). *See also* Prince George’s County Code, § 27-107.01(a)(1, 67, 68) (2013 Ed., 2014 Supp.) (“PGCC”) (each subsection therein defining “district” as that portion of the Maryland-Washington Regional District located in Prince George’s County, Maryland, and “district council” as the Prince George’s County Council, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Prince George’s County).

Applicant has met its burden on all relevant environmental criteria in the County Code to grant S.E. 4667.6

The 7.91-acre site, in the R-R zone, is located on the east side of Lottsford Vista Road, approximately 760 feet south of US 50 (John Hanson Highway). A review of the record indicates that there are no streams, wetlands or floodplain on the subject property; however, there is a Primary Management Area (PMA) along the southern portion of the property associated with an intermittent stream located on the adjacent property. The site drains to an unnamed tributary of Folly Branch, in the Patuxent River basin. There are steep slopes located on-site and the predominant soil types on the site are Collington-Wist Urban land complex, Marr-Dodon complex, and Marr-Dodon-Urban land complex. Marlboro clay is not found to occur in the vicinity of this property. Based on information obtained from the Maryland Department of Natural Resources Natural Heritage Program, there are no rare, threatened or endangered species found to occur on or adjacent to this site. Lottsford Vista Road is a designated historic road. The proposed development associated with this preliminary plan is not a noise generator. Lottsford Vista Road is designated as a collector roadway and the nearby US 50 is designated as a freeway, and is a source of traffic-generated noise. The entire site is located within the designated network of the Green Infrastructure Plan. This property is located in the Developing Tier as reflected in the 2002 General Plan.

The 1990 Master Plan for this area does not contain any environmental policies or strategies specific to the subject site as part of the review of S.E. 4667. The entire site is located within the designated network of the Green Infrastructure Plan and includes all three designations;

---

<sup>6</sup> Moreover, our approval of S.E. 4667 is also subject to conditions, which address various environmental requirements in the County Code. *See also* PGCPB No. 13-82, which also imposed conditions which address various environmental requirements in the County Code.

Regulated, Evaluation, and Network Gap areas. There are two Regulated areas located on the northeastern and south-southeastern portions of the property. The Regulated area on the south-southeastern portion of the site is associated with an off-site regulated stream. A small area of Network Gap is located on the northwestern corner of the site, adjacent to the intersection of Lottsford Vista Road and Vista Grande Drive. The remainder of the site is mapped as Evaluation area. The site plan submitted with the subject application shows a small area of woodland preservation and significant reforestation along the Regulated areas. Portions of the Regulated and Evaluations areas are proposed to be graded to accommodate stormwater management and site grading. The combination of preservation and reforestation as proposed is in general conformance with the Green Infrastructure Plan.

The subject property contains all three designations of the Countywide Green Infrastructure Plan, with regulated environmental features located along the south-southeastern property line. There is an off-site stream and the stream buffer is located on-site. The portion of the buffer that is currently wooded will remain undisturbed and reforestation measures are proposed in the remaining open buffer areas. The Special Exception Site Plan shows one proposed retention pond on the southern portion of the site abutting Lottsford Vista Road for water quality and quantity purposes. The pond outfall will convey water to a grass swale and ultimately to the adjacent off-site stream system along the southern boundary. Untreated off-site stormwater from the west side of Lottsford Vista Road is also being piped onsite, and is shown to be conveyed to a swale connecting with the pond's stormwater. *See* Ex. 17, Memorandum from Environmental Planning Section, 4/8/14.

- Traffic Issues

Willow Grove Citizens Association indicates that its traffic study submitted on remand should have been given more weight by the ZHE and not merely dismissed. *See* Notice of Appeal from Willow Grove Citizens Association, 9/4/15. The ZHE found that the Citizens chose not to produce a witness with expertise in the area of transportation planning. Notwithstanding, over the objection of the Applicant and People's Zoning Counsel to Citizens' lay testimony as to traffic conditions in the area, as well as the traffic count that two residents (Barrington McCoy and Frances Hawkins) performed on their own on November 5, 2014, Ex. R-11, the ZHE allowed the traffic study into evidence and testimony from the Citizens.<sup>7</sup> *See* ZHE's Remand Disposition Recommendation, pp. 5–6, 10.

The Citizens that testified as to traffic conditions noted (as many did in the first hearing) that there have been accidents in the area, the road has not been paved and there is a “hodgepodge of potholes” there that makes the area difficult to traverse. All believed there is too much traffic in the area. It was noted that access and egress lanes should be constructed prior to any buildings. Ex. R-12. Some noted that the bike routes in the area aren't protected making it difficult to achieve the Master Plan's recommendation for pedestrian and bike access. It was also noted that the closest bus route in the area was near Forbes Business Park, and Applicant should provide van

---

<sup>7</sup> The ZHE reflects that “Opposition submitted a traffic study that was not prepared by a professional and does not conform to the “Guidelines for the Analysis of the Traffic Impact of Development Proposals” – the regulations applied by the Maryland-National Capital Park and Planning Commission when evaluating the impact of vehicular trips that will be generated by a proposed development. Although I allowed the evidence in I cannot give it much weight for the above referenced reasons.” *See* ZHE's Remand Disposition Recommendation, p. 10. But *see People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 85-87, 956 A.2d 166, 194-95 (2008) *citing People's Counsel for Baltimore Co. v. Mangione*, 85 Md. App. 738, 751-52, 584 A.2d 1318, 1324-25 (1991) (stating evaluation of evidence in special exception application not balanced with formulaic precision; finder of fact must judge credibility of each witness and apply to evidence presented). *See also Anderson v. Sawyer*, 23 Md. App. 612, 620-22, 329 A.2d 716, 722-23 (1974) (finding testimony of expert no more probative value than layman in evaluation of evidence as to special exception application).

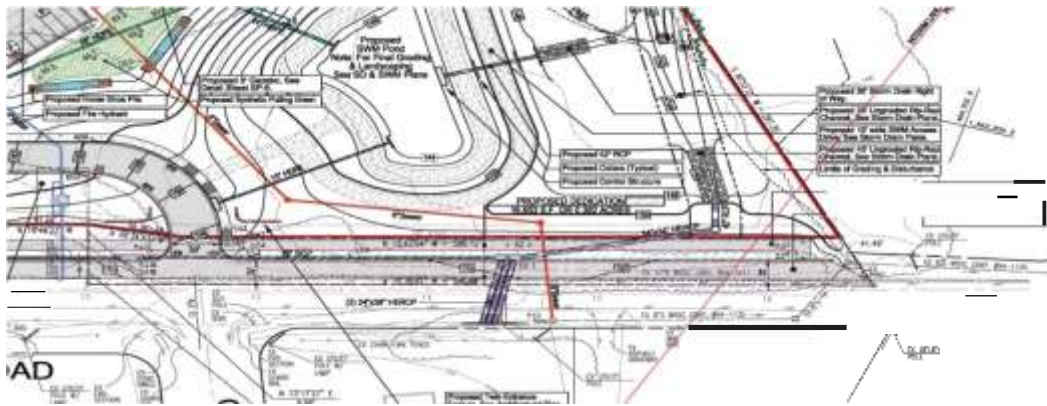
transportation for its employees/residents to ensure access to public transportation. *Id.* at 5. Mr. McCoy prepared the traffic information and was unable to appear at the remand hearing. However, Ms. Frances Hawkins assisted in the study and did testify. She noted that they performed the count by hand, and did not use any formula or equipment in gathering the data. Their count was taken between 7:15 and 8:45 a.m. on November 5, 2014. The Count notes, that during that period there were a total of 588 vehicles heading southbound on Lottsford Vista Road, and 1,009 vehicles heading north, for a total of 1,595 vehicles. *Id.* at 6.

The Transportation Planning Section evaluated bicycle and pedestrian access. At the time of preliminary plan, it was determined that bicyclists and pedestrians will be accommodated via an eight-foot-wide sidepath or wide sidewalk. Preliminary Plan 4-12020 included the following condition of approval, regarding the master plan facility along Lottsford Vista Road:

- The applicant and the applicant's heirs, successors, and/or assignees shall construct an eight-foot-wide sidewalk in accordance with county standards and specifications along the subject site's entire frontage of Lottsford Vista Road, unless modified by the Department of Public Works and Transportation. *See* PGCPB 13-82, Condition 9.

In light of the traffic concerns raised by the Citizens, the Applicants entire road frontage totals 908.89 feet. The property owners have already dedicated 448.20 feet of frontage on Lottsford Vista Road for *widening* to the State Highway Administration by deed recorded at Liber 6873 and Folio 383 (1987). The Preliminary Plan 4-12020 requires an additional dedication of the remaining right of way. The Preliminary Plan notes an additional 40 feet of dedication is from the State Highway baseline as shown below:





See Ex. 28–31.

S.E. 4667 site plans also correctly illustrates the requirements of the Preliminary Plan approval. Road improvements that will occur include a minimum of a 13 ft widening strip for the full length of the area to be dedicated as required in the Preliminary Plan, not inclusive of the concrete curb, which is also required. Additionally, these same road improvements are identified in approved TCP 1-010-10. See Ex. 13, 31.

WHEREAS, for the reasons stated above, we find that the appeals filed by Citizen Opposition are without factual or legal merit and conclude that the Applicant has met its burden for approval of the proposed special exception application; and

WHEREAS, as expressly authorized by the Regional District Act within Titles 22 and 25 of the Land Use Article of the Annotated Code of Maryland, and Subtitle 27 of the Prince George's County Code, we hereby adopt the disposition recommendation of the Zoning Hearing Examiner and conditionally approve the proposed special exception application.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1: The Special Exception Application and Tree Conservation Plan 003-14 for for permission to operate an Adult Day Care for 15 persons and a 63-unit Assistant Living Facility for 78 persons on approximately 7.91 acres of R-R (Rural Residential) zoned land located on the

east side of Lottsford Vista Road, across from its intersection with Cleary Lane, also identified as 3911 Lottsford Vista Road, Bowie, Maryland, is hereby conditionally APPROVED.

SECTION 2: In order to protect adjacent properties, the surrounding neighborhood, and to enhance the overall structure of the building, approval of the proposed special exception is subject to the following conditions:

- (1) A raze permit must be obtained through the Prince George's County Department of Permitting, Inspections and Enforcement prior to removal of any existing buildings. Any hazardous materials located in any structures on-site must be removed and properly stored or discarded prior to the structure being razed.
- (2) Prior to approval of any building/grading permit:
  - (a) A detailed site plan shall be reviewed and approved in accordance with Part 3, Division 9, of the Zoning Ordinance for the Assisted Living Facility for the subject development.
  - (b) A complete set of plans for the kitchen, along with the required fee must be submitted to the Prince George's County Health Department, Division of Environmental Health, for review and approval.
  - (c) Conformance to the sign regulations shall be reviewed at the time of detailed site plan approval.
- (3) At the time of detailed site plan review, the proposed architecture and entrance sign shall be revised according to the Urban Design Section memorandum dated April 3, 2014, on pages 92-97 of the Technical Staff Report.
- (4) The Applicant must comply with any outstanding preliminary plan conditions and apply for any needed access permits from the Prince George's County Department of Permitting, Inspections and Enforcement.
- (5) Prior to the issuance of permits, the Special Exception Site Plan shall be revised as follows, and submitted to the Office of the Zoning Hearing Examiner for review and inclusion in the record:
  - a. A Note shall be added to show how all of the applicable regulations of the R-R Zone (set forth in Section 27-

442 of the Zoning Ordinance) are being met.

- b. The 2010 Prince George's County Landscape Manual Section 4.2 schedules shall be removed from the plan and a Section 4.6 schedule and notes shall be added to the plan demonstrating the project's conformance to its requirements. If such demonstration cannot be made, the Applicant shall apply for, and bring forward a companion case, an alternative compliance (AC) application at the time of detailed site plan review.
  - c. A 2010 Prince George's County Landscape Manual Section 4.9 schedule shall be provided on the plan demonstrating conformance to all of its requirements.
  - d. The amount of on-site woodland conservation claimed for tree canopy coverage credit shall be verified against the amount shown on the Type 2 tree conservation plan.
  - e. The correct stormwater management concept plan number, 46822-2005-03, and its approval date shall be added to General Note 21 on the plan.
  - f. The existing sign shown on the left of the driveway, along Lottsford Vista Road, shall be removed and a detail for the new sign that shows its size and location shall be provided.
  - g. The preliminary plan number and its approval date shall be added to the Site Plan.
  - h. The right-of-way and center line of Lottsford Vista Road shall be provided on the site plan to ensure that the landscape strip does not fall within the proposed right-of-way.
  - i. The hours of operation for the Adult Day Care Center (Monday-Friday from 7:30 a.m. - 8:00 p.m., and Saturday from 9:00 a.m. - 8:00 p.m.) and hours of aftercare (if any) shall be added.
- (6) Prior to the issuance of permits, the TCP2 shall be revised as followed and submitted to the Office of the Zoning Hearing Examiner for review and inclusion in the record:
- a. The steep slopes must be removed from the plan and the legend for plan clarity. This information has been

adequately shown on the Natural Resources Inventory (NRI) for the site.

- b. Permanent Tree Protection fence and signs must be shown along all vulnerable edges of the reforestation area; specifically, the permanent fence and signs must be added along the public utility easement and below the stormwater management pond.
- c. A specimen tree sign must be shown on the plan adjacent to preserved specimen tree 4; this symbol must be added to the plan.
- d. The assigned plan number must be typed into the approval block (TCP2-003-14).
- e. TCP2 general note 7 must be revised to indicate that the site fronts on Lottsford Vista Road, which is a designated historic road.
- f. Planting Specification Note 16 must be revised to indicate that the source of seedlings is “to be determined.”
- g. The planting schedule must be revised to show the planting of seedlings at a density with a minimum of 700 seedlings/ acre and not to exceed 1,000 seedlings/ acre.
- h. The following standard details must be added to the plan in accordance with the Environmental Technical Manual:
  - 1. Reforestation sign detail (DET-2)
  - 2. Specimen tree sign detail (DET-3)
  - 3. Tree pruning detail (DET-11)
  - 4. Planting months detail (DET-13)
  - 5. Handling bare root stock (DET-15 and 16)
  - 6. Seedling/ whip planting detail (DET-17)
- i. If any land containing woodland conservation is to be dedicated to a county agency, the applicant shall provide written correspondence from that county agency stating that the agency agrees to the area of woodland conservation on the dedicated land.

- (7) After the Detailed Site Plan is approved, a copy shall be submitted to the

Office of the Zoning Hearing Examiner for inclusion in the record.

[Note: The Special Exception Site Plan and Landscape Plan are Exhibits 14(a)-(e).  
The Tree Conservation Plan is Exhibit 15 (a)-(c).]

SECTION 2: This Ordinance shall take effect on the date of its enactment.

Enacted this 8<sup>th</sup> day of February, 2016, by the following vote:

In Favor: Council Members Franklin, Davis, Glaros, Harrison, Patterson, Taveras,  
Toles and Turner.

Opposed:

Abstained:

Absent: Council Member Lehman.

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: \_\_\_\_\_  
Derrick L. Davis, Chairman

ATTEST:

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