

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

**SPECIAL EXCEPTION**

**4678**

**DECISION**

Application:	Congregate Living Facility and Adult Day Care Center
Applicant:	Henson Creek House, LLC
Opposition:	None
Hearing Dates:	January 12 and 26, 2011
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Condition

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4678 is a request for permission to use approximately 2.371 acres of land in the R-80 (One-Family Detached Residential) Zone located on the west side of Temple Hill Road, 700 feet south of the Capital Beltway (I-495), also identified as Lot 17 of Plat Two, Chambers Estates, a recorded but undeveloped subdivision, for a Congregate Living Facility and an Adult Day Care Center.
- (2) AC-10017 is a companion request seeking Alternative Compliance from the Prince George's County Landscape Manual for the eastern property line.
- (3) The Technical Staff recommended approval with conditions (Exhibit 15) and the Planning Board elected not to consider the Application and in lieu thereof adopted the recommendation of the Technical Staff. (Exhibit 17)
- (4) No one appeared in opposition to the instant request. Mr. Daniel Lusk, an adjacent property owner, testified in support of the Application, including the compatibility of the proposed uses at this location.
- (5) At the conclusion of the evidentiary hearing the record was kept open to permit the submittal of additional exhibits, upon receipt of which the record was closed on March 22, 2011.

**FINDINGS OF FACT**

- (1) The subject property is irregularly shaped and consists of approximately 2.37 acres of land located on the west side of Temple Hill Road, 700 feet south of the Capital Beltway (I-495). It is known as Lot 17 of Plat Two, Chambers Estates, a recorded but otherwise undeveloped subdivision. The property contains a large two-story brick and frame residence with a walk-out basement. The site

has been used since 2005 as a Congregate Living Facility for eight persons, a permitted use in the R-80 Zone. The site is predominantly cleared and maintained as a lawn. The eastern and southern periphery of the site is wooded. The site has frontage on Florist Way, a paper street. Access is provided via an existing driveway from Temple Hill Road through an easement across Lots 20 and Lots 28–31 of Plat Two, Chambers Estates. The easement agreement allows the Applicant to access the subject property via the existing driveway until such time as Florist Way is constructed, at which time the easement would be extinguished and Florist Way utilized. (Exhibit 8(c))

(2) The Applicant proposes two (2) separate uses of the subject property which will encompass only 34.5% of the site (60% lot coverage permitted).

### **Neighborhood and Surrounding Uses**

(3) The neighborhood is bounded on the north by the Capital Beltway (I-495), on the east by Temple Hill Road, and on the south and west by Brinkley Road.

(4) The subject property is surrounded on the north, east and west by undeveloped lots in the R-80 Zone and on the south by single family residences in the R-80 Zone.

(5) The neighborhood is residential in character and is predominately developed with a mix of single family detached dwellings and a few multifamily complexes. The subject property is part of a plotted but unbuilt subdivision known as Chamber Estates, which is comprised of 31 lots.

### **Master Plan and Sectional map Amendment**

(6) The April 2006 Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area recommends a residential low-density land use for the subject property and retained the subject property in the R-80 Zone.

(7) The 2002 Prince George's County Approved General Plan placed the site in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods. This Application is consistent with the development pattern policies for the Developed Tier by encouraging appropriate infill development and strengthening existing neighborhoods.

### **Applicants' Proposal**

#### **Congregate Living Facility**

(8) The Applicant seeks approval of a Special Exception to expand an existing Congregate Living Facility from 8 to 20 elderly residents. The Applicant has operated a Congregate Living Facility, referred to as Henson Creek House, on the premises since 2005. The Zoning Ordinance permits a Congregate Living Facility for up to eight elderly or disabled residents by right in the R-80

Zone. For more than eight residents, a Special Exception is required. The requested use will not require an addition or expansion to the building.

### **Adult Day Care Center**

(9) The Applicant also seeks an approval of a Special Exception to operate a privately owned Adult Day Care Center in the R-80 Zone. The proposed use will operate from Monday through Friday during the hours of 7:00 a.m. to 5:00 p.m. and will host 60 participants and five (5) staff members. The building itself is proposed to be 5,000 square feet in size and will provide daily transportation to and from the Center.

### **Alternative Compliance**

(10) The Applicant requests Alternative Compliance to Section 4.7 (Buffering Incompatible Uses) of the Prince George's County Landscape Manual along the eastern property line. The existing building does not meet the 30-foot-wide building setback, and the 20-foot-wide landscape yard is partially and temporarily occupied by the existing access drive and parking lot.

## **LAW APPLICABLE**

(1) A Congregate Living for more than eight (8) elderly or physically handicapped residents and an Adult Day Care Center are both permitted by Special Exception in the R-80 Zone in accordance with the requirements of §27-317, 27-344, and 27-332 of the Zoning Ordinance.

(2) Section 27-317 provides as follows:

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

(3) Section 27-344 provides as follows:

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

(1) There is a demonstrated need for the facility;

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

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

(4) Section 27-332 provides as follows:

(a) An adult day care center may be permitted, subject to the following:

(1) The subject property shall be suitable for the type of facility proposed, taking into account the character of surrounding properties and the general neighborhood, and any other uses on the subject property;

(2) The subject property shall be of sufficient size to accommodate a facility of the scope proposed;

(3) Vehicular access to the subject property shall be adequate, taking into account the scope of the facility, the type and amount of traffic expected to be generated, and the type, service level, and capacity of the streets along which the subject property has frontage; and

(4) A statement shall be submitted explaining:

(A) The policies and goals of the center;

(B) The characteristics and number of occupants to be served;

(C) The type of care and activities proposed;

(D) Operating methods and procedures proposed;

(E) The type and amount of traffic expected to be generated; and

(F) Other appropriate aspects of the center's operation.

(5) As noted above, the Applicants must show a "demonstrated need" for the proposed Congregate Living Facility. Need has been judicially held to mean expedient, reasonably convenient, and useful to the public. Lucky Stores, Inc. v. Board of Appeals, 312 A.2d 758, 270 Md. 513 (1973); American Oil Company v. Board of Appeals, 270 Md. 301; 310 A.2d 796 (1973).

(6) It has been predetermined by the District Council that a Congregate Living Facility and an Adult Day Care Center in the R-80 Zone are conditionally compatible with uses permitted as a right in that zone. If the Applicants establish that the uses at the subject property meet the criteria for such uses, the Application should not be denied unless it adversely impacts the surrounding properties in a manner unique from such uses located elsewhere in the R-80 Zone. See, Schultz v. Pritts, 291 Md. 1, 432 A. 2d 1319 (1981); Moseman v. County Council, 99 Md. App. 258, 636 A. 2d 499 (1994)

**Burden of Proof**

(7) The burden of proof in any zoning case shall be the Applicant's. (Section 27-142 (a)) Zoning cases are those matters designated to be heard before the Zoning Hearing Examiner by the Zoning Ordinance of Prince George's County. §27-107.01(a)(266)

**Burden of Production and Persuasion**

(8) The Applicants have the burden of providing legally sufficient evidence that is accepted into the record from which findings and conclusions can be either made directly or by reasonable inference. However, the Applicants must also persuade the trier of fact that the evidence produced not only permits the approval of the request but also is of sufficient strength or outweighs other evidence to the effect that the request either should or is required to be granted. B.P. Oil Company v. County Board of Appeals of Montgomery County, 42 Md. App. 576, 401 A.2d 1054 (1979).

**Standard of Proof**

(9) In reviewing the evidence that has been "produced" to determine if the District council is "persuaded," the District Council must determine whether the answers, finding, or conclusions required or reached are supported by a "preponderance of the evidence" on each issue. While these magic words are not required to be recited, the "preponderance of the evidence" is that evidence, when fairly considered, makes the stronger impression, has the greater weight and is more convincing as to its truth than the evidence in opposition thereto. William v. Supt. Clifton T. Perkins Hospital Center, 43 Md. App. 588, 406 A.2d 1302 (1980).

**Credibility or Evidence**

(10) It is within the sound discretion of the trier of fact to determine certain evidence lacks credibility and to give no weight to that evidence. Md. State Retirement and Pension System v. Martin, 75 Md. App. 240, 540 A.2d 1188, 1192 (1988). In other words, certain evidence may just be ignored. It is given no weight in the conclusion, hence, found not credible. Credibility findings of a hearing officer or judge is entitled to considerable deference and should not be reversed, absent an adequate explanation of the grounds for the reviewing body's source of disagreement. Anderson v. Dept. of Pub. Safety and Correctional Services, et. al., 330 Md 187, 623 A.2d 198 (1994)

**Opinion Testimony/Experts, Lay Witnesses**

(11) The admissibility of expert testimony is within the discretion of the trier of fact. Actions of trial courts, and presumably other triers of fact such as the District Council, are seldom reversed. However, such determinations are reviewable and reversed if there is (1) error law, (2) a serious mistake, or (3) an abused of discretion. Raithel v. State, 280 Md. 291, 301, 372 A.2d 1069 (1977); Oaks v. State, 83 Md. App. 1, 573 A.2d 392 (1990).

(12) Moreover, in reviewing the evidence before the . . . (District Council) . . . , it must also be noted that the opinion or conclusion of an expert or lay witness is of no greater probative value than that warranted by the soundness of his underlying reasons or facts. *Surkovich v. Doub*, 258 Md. 263, 272, 265 A.2d 447, 451 (1970); *Anderson v. Sawyer*, 23 Md. App. 612, 618, 329 A.2d 716, 720. The Court of Appeals and . . . (the) . . . Court . . . (of Special Appeals) . . . have stated that an opinion, even that of an expert, is not evidence strong or substantial enough to show error in a comprehensive rezoning unless the reasons given by the witness as the basis for his opinion, or other supporting facts relied upon by him, are themselves substantial and strong enough to do so. *Stratakis, supra*, at 268 Md. 655, 304 A.2d 250; *Coppolino v. County Board of Appeals of Baltimore County*, 23 Md. App. 358, 371-72, 328 A.2d 55, 62 (1974)." *Boyce v. Sembly*, 25 Md. App. 43, 53, 334 A.2d 137 (1975). See also *Mayor and City Council of Baltimore v. Bruce*, 46 Md. App. 704, 420 A.2d 1272, 1278-79 (1980).

(13) Reliance on lay witness evidence, even hearsay evidence, if credible and of sufficient probative force, is permissible in administrative hearings and such evidence, even only the hearsay evidence, may be the sole basis for the decision. *Newman v. Mayor and City Council of Baltimore*, 251 Md. 92, 246, A.2d 583 (1968); *Eger v. Stone*, 253 Md. 533, 253 A.2d 372, 377 (1969).

## CONCLUSIONS OF LAW

(1) The instant Application is in conformance with the general purposes of the Zoning Ordinance, §27-102, as follows:

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

The expansion of the facility satisfies this Purpose. The existing Congregate Living Facility conveniently serves the present elderly inhabitants of the county by providing safe, comfortable housing. Expanding it and adding the Adult Day Care Center will enable the Applicant to provide these services to additional elderly citizens while not negatively impacting the safety or welfare of surrounding residents. Adequate setbacks and landscaped buffers are provided to soften the views from adjoining properties.

There is an existing Congregate Living Facility on the subject property which has operated since 2005. There was no evidence presented that this use has produced any negative impacts on the health, safety or welfare of adjacent residents. No expansion of the building for the Congregate Living Facility is proposed. The Applicant is proposing the addition of a significant amount of landscaping and fencing that will further buffer the proposed uses from adjoining residents. Given its history, there is no evidence that expanding the use and adding a mutually beneficial use will have any negative impact on the health, safety, morals, comfort, convenience, or welfare of present or future inhabitants of the County.

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

The 2002 Approved General Plan for Prince George's County places the subject property in the Developed Tier. Most of the Developed Tier occurs inside the Capital Beltway, but it is expanded in the areas around Greenbelt, Beltsville and this area in and around Oxon Hill and Temple Hill. The General Plan recognizes that much of the Developed Tier was developed prior to the existence of current zoning and development regulations. The General Plan also notes that most of the public transit system serves the Developed Tier. (General Plan, p.31) The General Plan sets forth certain goals for future development in the Developed Tier. Of these goals, found on Pages 31 and 32, many relate to public investment and commercial and employment areas. The subject property is in the middle of a large suburban type residential development. Goals applicable to this specific proposal are to:

- Strengthen existing neighborhoods.
- Encourage appropriate infill.
- Capitalize on investments in transportation and other infrastructure.

The challenge is to ensure that new development or redevelopment enhances established communities, includes more mixed-use and more intense development in designated Centers and Corridors, and offers an attractive alternative to the suburban neighborhoods in the Developing Tier. (General Plan, p.32)

The Congregate Living Facility has operated on this site successfully since 2005. The Applicant's proposal to expand it and add an Adult Day Care Center is consistent with the General Plan's goals. It will strengthen the neighborhood by consolidating services for the elderly in a convenient location. It represents appropriate infill development in that a large property will be fully developed with like uses, compatible with each other and the surrounding neighborhood. This use is not located in a designated Center or Corridor, leaving those areas in the Developed Tier available for more intense development.

The 2006 Approved Master Plan for the Henson Creek-South Potomac Planning Area recommends residential, low density land use for the property. Policy 1 for the Developed Tier in the Master Plan is to "Preserve and enhance existing suburban residential neighborhoods." As noted, the Master Plan recommends low density residential land use. Strategies for this Policy include ensuring that "the design of new development in suburban residential areas maintains or enhances the character of the existing community." To this end, the Plan recommends that low-density residential land use be retained on "undeveloped parcels in established residential neighborhoods." The Plan also recommends that institutional and Special Exception uses be designed to "reflect the scale and character of the surrounding neighborhood." (MP, p. 36)

The expansion of the Congregate Living Facility will be an interior expansion of the use only. No expansion of the building is proposed. The new Adult Day Care Center is smaller in scale than

the existing large converted home on the property. It is in scale with the existing uses and character of the surrounding neighborhood, many of which are multifamily buildings and other institutional uses, including day care facilities and churches.

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

The Application proposes the expansion of the existing Congregate Living Facility and the addition of the similar type use of the Adult Day Care Center. As noted, the property is in the Developed Tier. The proposal represents infill development, within an established community, served by public water and sewer. The Transportation Staff has acknowledged that it will have no tangible impact on public streets; and other public facilities and services are close by. This proposal makes advantageous use of existing public facilities and services and is in conformance with this Purpose.

- (4) *To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;*

Combining like services and uses, by locating an Adult Day Care Center with the existing and expanded Congregate Living Facility, promotes orderly growth in the county. The proposed Special Exception provides additional housing options for elderly residents in conformance with this Purpose.

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

The proposed Special Exception provides adequate light, air and privacy. The proposed new Adult Day Care Center building is a one story building that will be located topographically below the existing Congregate Living Facility. Because it is a low one story building at the low end of the property, it will have no impact on light, casting no more shadows on adjoining properties than would a typical single family home. It abuts an area designated for a future stormwater management facility on the Chambers Estates Subdivision. The Applicant is providing buffers, setbacks and fencing in accordance with the Landscape Manual requirements that will ensure privacy of both residents and users of these facilities and the existing and future residents of surrounding properties.

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

The proposed expansion of the Congregate Living Facility and the additional Adult Day Care Center are residential and institutional uses by nature that will have minimal impact on adjoining streets and properties. The Site Plan (Exhibit 41) includes buffers and setbacks that will protect adjoining uses from the minimal, if any, impact of these uses. With very little exception, the additional pavement required to serve the expanded and additional use will be interior to the site, blocked from view by the buildings themselves and the additional buffers. Again, the proposed building is a one story building that is smaller than the existing building. No changes are proposed



to the existing building, and the addition of required landscaping will soften the appearance of the buildings on this site from views from adjacent properties. The property is large, compared to adjacent lots and given the minimum lot size in the R-80 Zone, and the addition of a second building will fit easily into the area.

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

The proposed development must conform to all applicable fire and stormwater management regulations. These issues will be addressed at the time of permit. There is no floodplain on the property, as identified in Note 6 on the Site Plan, Exhibit 41.

**(8) *To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;***

This Special Exception provides safe and affordable housing for senior citizens at all income levels. Not only does this proposal advance this Purpose, it is the basis of this Application. The Applicant proposes the addition of the Adult Day Care Center to provide a healthy environment for those who do not yet need assisted living services, and the expansion of the Congregate Day Care Facility for those who do.

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

The proposed uses will contribute to the tax base and broaden it. It will encourage more citizens to stay in the county by providing safe, affordable, sanitary housing for loved ones who might otherwise need to go elsewhere, whether in or out of the County.

**(10) *To prevent the overcrowding of land;***

As noted, this property is approximately 2.03 acres in size; almost 10 times the minimum lot size of 9,500 square feet (or 0.22 acres) in the R-80 Zone. The existing Congregate Living Facility is the size of a large home. The additional building is shorter and narrower than the existing structure and is only one story in height. The instant Application does not overcrowd the land, utilizing only 34.5% lot coverage whereas 60% lot coverage is permitted in the R-80 Zone.

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

As noted by the Transportation Planning Staff, Congregate Living Facilities and Adult Day Care Center uses generate very little traffic. Given this, these uses, combined will not add to traffic congestion on the streets.

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

Providing a variety of housing and institutional uses is the backbone of social and economic stability in the county. This Application provides safe and healthy housing for elderly citizens who need it and provides adequate day time care for those who live elsewhere but need day time care. This promotes the social and economic stability in the County.

***(13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;***

Expanding an existing use and adding a compatible use to a site that has no sensitive environmental features protects stream valleys slopes and dense forests. The site, while ideal for the proposed use, offers no scenic views. In addition, noise is not typically an issue associated with Adult Day Care Center or Congregate Living Facilities.

***(14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and***

The subject property is ideal for the proposed uses. It has an existing structure and it contains no particular natural features, such as wetlands, streams, and floodplain. It is in the middle of a larger proposed subdivision of smaller lots. The Adult Day Care Center will provide recreational opportunities for residents.

***(15) To protect and conserve the agricultural industry and natural resources.***

Expanding the existing use and adding a compatible use on the same property will have no impact on the agricultural industry or natural resources. The property is neither used for agricultural purposes, nor has any protected natural features. It is not part of the Green Infrastructure Plan. §27-317(a)(1)

(2) The instant Application is in conformance with the specific purposes of the R-80 Zone, §27-429(a)(1), as follows:

***(A) To provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, in order to better utilize the natural terrain;***

The purposes of the R-80 Zone relate primarily to the creation of single family residential lots and subdivisions, not the establishment of other uses permitted in the R-80 Zone. However, the subject property is more than two (2) acres in size, in the middle of a recorded, but not yet built, subdivision of typical R-80 Zoned lots which are a minimum of 9,500 square feet. The subject property is located in the middle of this subdivision characterized by gently rolling terrain.

**(B) *To facilitate the planning of one-family residential developments with medium-sized lots and dwellings of various sizes and styles;***

The large size of the subject property, in relation to the minimum lot size in the R-80 Zone, makes it uniquely suited to the uses proposed for the property. In fact, the prairie style structure on the property is unique in the area and is larger than the homes in the surrounding developed area. The larger lot size allows this larger dwelling to fit compatibly into the neighborhood providing the variety this Purpose seeks while not overwhelming the neighborhood.

**(C) *To encourage the preservation of trees and open spaces;***

The subject property is subject to Tree Conservation Plan TCP II/142/04. The proposed Special Exception for an Adult Day Care Center and Congregate Living Facility for 20 residents makes no changes to this approved Tree Conservation Plan. The instant Application retains nearly 65 percent of the property as open green area, preserving ample open space on site.

**(D) *To prevent soil erosion and stream valley flooding.***

The proposed development must conform to all applicable Soil Conservation and Stormwater Management regulations. These will be addressed at the time of building permit. Typically, issues of soil erosion and flooding are exacerbated when properties are overdeveloped. Given the relatively large size of the property and the 65 percent green area to be preserved on the site, these are not expected to be issues. Additionally, Stormwater Management issues were addressed when the property went through the subdivision process. However, even with these County safeguards already in place, further reviews at the time of building permits should address these issues in greater detail. §27-317(a)(1)

(3) With the recommended conditions in place, the proposed use and accompanying Site and Landscape Plans are in conformance with all applicable requirements and regulations of the Zoning Ordinance. §27-317(a)(2)

(4) The proposed use will not substantially impair the integrity of the 2006 Approved Henson Creek-South Potomac Master Plan and Sectional Map Amendment. The Master Plan presumes the compatibility of Special Exception uses in the zones in which they are permitted, absent specific findings to the contrary. The Applicant is proposing to expand a residential use in a residential zone in accordance with the recommended land use and with the General Plan's vision for the Developed Tier. §27-317(a)(3)

(5) The size of the facilities proposed will not be increased, but is currently sufficient to meet the needs of 20 residents. The referral replies received by the Technical Staff indicate that the expansion of services will not adversely affect the health, safety, or welfare of residents in the area. The Transportation Planning Section indicated that the site will generate 12 AM and 15 PM peak-hour trips, which will have no discernable impact upon the transportation system. The existing Congregate Living Facility has been a compatible use in the community for some time and its

continued, expanded operation will not adversely affect the health, safety, or welfare of residents or workers in the area. §27-317(a)(4)

(6) In general, Congregate Living Facilities for the elderly and Adult Day Care Centers are compatible neighbors that generate little noise or traffic. The proposed uses can be accommodated on the site with little change to its existing character and will not be detrimental to the use of adjacent properties or the general neighborhood. The amount of traffic generated by the uses is negligible. All of these factors support a finding that the proposed uses will not be detrimental to the use or development of adjacent properties or the general neighborhood. §27-317(a)(5)

(7) The subject property is subject to the provisions of the Prince George's County Woodland Conservation Ordinance as the site has an approved Tree Conservation Plan, TCPII/142/04. Because no significant changes are required to the TCPII as a result of this proposal, the Application is grandfathered under the 1993 Woodland Conservation Ordinance. The Type II Tree Conservation Plan was reviewed with the proposed Special Exception Site Plan. The Site Plan was found to be in conformance with the approved TCP, thus no changes to the TCPII are required. §27-317(a)(6)

(8) No disturbance to the regulated environmental features within the limits of the subject Application has been proposed. The Site Plan is in conformance with the approved TCPII. Therefore, the regulated environmental features of the site have been fully preserved in a natural state. §27-317(a)(7)

### **Congregate Living Facility**

(9) The Zoning Ordinance distinguishes a Congregate Living Facility from an Assisted Living Facility by the number of residents it serves. A Congregate Living Facility houses 4 to 20 residents. An Assisted Living Facility cares for 20 or more residents. The services they provide are the same: living and sleeping facilities, meal preparation, laundry services, housekeeping, personal observation, transportation to routine social and medical appointments, and the availability of a responsible adult for companionship and non-clinical counseling. The Applicant is seeking to expand an existing use that meets the definition of a Congregate Living Facility. (T.pgs.15-20)

The term "need" in the context of Special Exceptions has been interpreted by the Maryland Court of Appeals to mean "expedient, reasonably convenient and useful to the public" rather than absolutely necessary or essential. The instant Application represents an expansion to an existing use that has operated successfully since 2005. The Applicant testified the facility must frequently turn away potential residents due to its licensing limitations.

The Information Center of the Prince George's County Planning Department of The Maryland-National Capital Park and Planning Commission (M-NCPPC) engaged the ProMatura Group, LLC to conduct an analysis of the senior housing market in Prince George's County. The three primary goals of the study were to:

1. Research and prepare an overview of the senior housing market.
  - a. Assessment of trends in development.
  - b. Assessment of demand for senior housing in Prince George's County and the Washington metropolitan region.
  - c. Assess the impact that national trends in senior housing might have upon Prince George's County and the Washington metropolitan region.
2. Prepare a demographic profile of the active senior market in Prince George's County and the Washington metropolitan region.
3. Conduct a housing market analysis for active adult communities in Prince George's County.

According to the study, "the elderly population will continue to increase for at least the next decade and so will the demand for senior housing." In addition to excerpts from the above study, the Applicant submitted its own Needs Assessment (Exhibit 13) from which it can be reasonably concluded that there is a deficiency in the market for the type of facility provided by the Applicant. The proposed request will permit the Applicant to serve a greater number of elderly residents in an intimate, home-like environment in a location that provides a peaceful residential setting. §27-344(a)(1)

(10) The proposed Congregate Living Facility for 20 residents is in compliance with the physical requirements, and will operate in accordance with, all State and County Ordinances and regulations. No alterations to the exterior of the building are proposed, and the interior floor area of the building complies with the regulations of the Maryland Department of Health and Mental Hygiene. The facility is currently licensed by, and is in good standing with, that agency.

Henson Creek House currently contains 13 bedrooms, ranging in size from 120 square feet to 238 square feet. The Prince George's County Zoning Ordinance requires a single room to contain no less than 100 square feet and a double room no less than 160 square feet. This translates into six single and seven double rooms in the existing space, for a total of 20 residents. §27-344(a)(2)&(3)

### **Adult Day Care Center**

(11) The subject property's existing Congregate Living Facility will be complemented by the operation of the proposed Adult Day Care Center, providing a range of senior services on-site. Additionally, an Adult Day Care Center is compatible with the surrounding residential single-family detached dwellings and may provide services to some of the area's residents. Detailed architectural elevations for the proposed building, as well as photographs of the existing structure on-site have

been provided in addition, to conceptual three-dimensional renderings of the proposed building in relation to the existing building.

The renderings show the existing Congregate Living Facility building to be of a prairie architectural style with a hipped roof, broken into multiple levels. The materials are mostly a tan brick on the lower level, with a slate siding used as an accent along the upper portion of the building. The proposed building for the Adult Day Care Center, as seen on the renderings, is a typical neoclassical box-type building, with a hipped roof and square white columns along the front façade. The building materials are the same tan brick with accent shingle siding as on the existing building. Additionally, the Applicant has verbally committed that the proposed building would be built of the same materials as the existing building. (Exhibits 37 & 41) §27-332(a)(1)

(12) The subject property is 2.03 acres, which would comfortably accommodate both the proposed Adult Day Care Center and the existing expanded Congregate Living Facility, leaving sufficient space to comply with all Zoning Ordinance requirements except buffering along the eastern property line. This need for Alternate Compliance from the requirements is necessary by virtue of the fact that the existing building on the site was built in 1962, long before the advent of the Landscape Manual requirements. Furthermore, the proposed lot coverage of 34.5 percent is approximately half of the 60 percent allowed by the Zoning Ordinance, signifying that the property is generally sufficient in size to accommodate both the existing and the proposed use. §27-332(a)(2)

(13) The proposed Adult Day Care Center is not expected to generate significant traffic. The majority of the persons at the Center will be brought by a van operated by the facility. The Transportation Planning Section estimates that the proposed uses would result in an additional 12 AM and 15 PM peak-hour trips.

The increased enrollment is not sufficient to trigger the need for additional studies of traffic impacts. Outside of Special Exception cases where studies are required, traffic studies have rarely been deemed necessary, and then only for uses generating over 100 new trips. The critical intersection for this site is the intersection of Temple Hill Road and Fisher Road. Studies within the past five years indicate that the intersection operates adequately in consideration of approved development. There are no apparent safety issues that would result from the proposed Adult Day Care Center.

Access is proposed by means of an access easement from Temple Hill Road containing a 22-foot driveway. While the presence of two platted but unbuilt streets adjacent to the site is unusual, there is no compelling reason to require that access be gained via a built public street versus the 22-foot driveway. In fact, because the public secondary street would be 26 feet of pavement with on-street parking, the existing driveway could be deemed to be a superior option for access. There would never be parking on the driveway, thereby allowing unrestricted two-way access. Thus access for the proposed uses on the site is acceptable in consideration of the scope of the facility and the traffic to be generated. §27-332(a)(3)

(14) The Applicant has indicated that the objective of the Adult Day Care Center is to offer care to seniors with the intent to motivate and support them through assistance with their daily needs and life skills. This is achieved by giving older adults an opportunity to get out of the house and receive both mental and social stimulation. The Center's goals will focus on enriching the participants' lives, building upon their skills, knowledge, and unique abilities and strengths. There is a reciprocal benefit in giving caregivers a much-needed break in which to attend to personal needs, or simply rest and relax.

The Adult Day Care Center will offer daily transportation to and from the facility. The Applicant proposes that the hours of operation would be 7:00 a.m. to 5:00 p.m. and that the total number of occupants would be 60 in addition to five staff. Two meals (breakfast and lunch) and a snack will be served each day.

The Center will have the following staff on duty at all times:

- Registered Nurse
- Office Manager
- Medical Technician(s)
- Assistants
- Chef
- Activities Coordinator

§27-332(a)(4)(A)

(15) The Adult Day Care Center will be for a maximum of 60 occupants. The Applicant has identified their participants as being seniors who:

- Can benefit from the friendship and functional assistance a day care center offers.
- May be physically or cognitively challenged but do not require 24-hour supervision.
- Are in the early stages of Alzheimer's disease.
- Participants need to be mobile, with the possible assistance of a cane, walker, or wheelchair, and in most cases they must also be continent.

§27-332(a)(4)(B)

(16) All prospective participants will be screened by the staff to ensure that the needs of the participant can be met by the Center. The activities program provides opportunities for activities that require group interaction and daily living skills including arts and crafts, musical entertainment and sing-a-longs, mental stimulation games, stretching and other gentle exercise, discussion groups, holiday and birthday celebrations, and local outings.

The Center is also proposing to offer programs that include children in an intergenerational program. For example, seniors visit classrooms and share their life experiences with the children, educating and enlivening both groups. In addition, the center also will have an "Awesome Aging"

program for people with early stage Alzheimer's disease to help them remain engaged and active in the community. The Center will also provide social services including counseling and support groups for caregivers and health support services such as blood pressure monitoring and vision screening. §27-332(a)(4)(C)

(17) The proposed Adult Day Care Center will operate in accordance with all State and County ordinances, regulations and procedures. §27-332(a)(4)(D)

(18) The proposed Adult Day Care Center is not expected to generate significant traffic. The majority of the persons at the Center will be brought by a van operated by the facility. The Transportation Planning Section estimates that the proposed uses would result in an additional 12 AM and 15 PM peak-hour trips. Access to the site will continue to be provided via the existing driveway from Temple Hill Road until such time as Florist Way is constructed. In a memo dated July 9, 2010, the Transportation Planning Staff stated that the proposal for expanded uses on the site would not pose unanticipated safety issues on adjacent roadways. Access for the proposed uses on the site is acceptable in consideration of the scope of the facility and the traffic to be generated. §27-332(a)(4)(E)

(19) All aspects of the Adult Day Care Center's methods and procedures of operation shall be in accordance with all laws and regulations. §27-332(a)(4)(F)

### **Parking and Loading**

(20) Section 27-568 of the Zoning Ordinance requires a total of 27 parking spaces combined for the Congregate Living Facility and the Adult Day Care Center. The Site and Landscape Plans, Exhibits 41(a) & (b), provide the required 27 parking spaces, including three (3) handicapped parking spaces.

### **Signage**

(21) All signage is shown on the Site and Landscape Plans, Exhibit 41(a) & (b), and is in conformance with the County's Sign Ordinance.

### **Zone Requirements**

(22) Both the proposed expansion of the Congregate Living Facility and the proposed Adult Day Care Center are, with the approval of Alternative Compliance, in accordance with the requirements and regulations for the R-80 Zone.

### **Alternate Compliance**

(23) The subject property is subject to Sections 4.2, Commercial and Industrial Landscaped Strip, 4.3(a), Parking Lot Landscaped Strip, and 4.7, Buffering Incompatible Uses, of the Prince George's



County Landscape Manual. The Applicant has filed a request for Alternative Compliance to allow a reduced bufferyard because the existing building does not meet the 30-foot-wide building setback, and the 20-foot-wide landscaped yard is partially (but temporarily) occupied by the existing access drive and parking lot.

Section 4.7 of the Prince George's County Landscape Manual requires a building setback of 30 feet and a 20-foot-wide landscaped yard along the entire eastern boundary of the site, adjacent to an undeveloped residential lot. The Alternative Compliance Committee requested that the Applicant show the landscape plan in two phases. The first phase shows the site plan proposal with vehicular access remaining through the existing 25-foot access easement. During the first phase, the Alternative Compliance Committee finds that the proposed board-on-board fence, the preservation of existing trees on-site, and the incorporation of a variety of plant material along the eastern property line will result in buffers that are equal to or better than normal compliance with the Prince George's County Landscape Manual. Likewise, the second phase, which is characterized by access via Florist Way, will provide additional evergreen material along the eastern property line and will result in completing buffers that are equal to or better than normal compliance with the Prince George's County Landscape Manual.

The Alternative Compliance Committee and the Planning Director find that the proposed combination of fencing and plantings will result in buffers that are equal to or better than normal compliance with the Prince George's County Landscape Manual and are recommending approval.

### **DISPOSITION**

Special Exception 4678 is Approved, subject to the following Condition:

- (1) Upon the completion of construction of Florist Way as a public street abutting the subject property, use of the existing asphalt and gravel driveway across Lots 20, 28, 29, 30 and 31 shall terminate. At that time, the Applicant shall release and vacate the access easement. Once vacated, the Special Exception shall be amended to remove the area of the easement

AC-10017 is Approved.

The Approved Site and Landscape Plans are Exhibits 41(a) & (b).