

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

SPECIAL EXCEPTION

4770

VARIANCE

4770

DECISION

Application:	Congregate Living Facility, Variance and Tree Conservation Plan
Applicants:	Castles of Love Assisted Living Home, Inc./Charlotte Branch
Opposition:	None
Hearing Dates:	February 1, 2017, March 9, 2017 and July 5, 2017
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) Special Exception 4770 is a request to expand an existing Congregate Living Facility from eight (8) residents to sixteen (16) residents on approximately 3.15 acres of land in the O-S (Open Space) Zone, located at 14711 Mount Calvert Road, Upper Marlboro, Maryland.

(2) Variance 4770 is requested because the site does not have the 5 acres required in the O-S Zone as a result of a court ordered foreclosure pursuant to a Deed of Trust. (Exhibit 11, pp. 76-77 and Attachment)

(3) Applicant also requests approval of TCP 2-006-2016. (Exhibits 46(a) and (b))

(4) The Technical Staff recommended approval with conditions. (Exhibit 11) The Planning Board elected not to consider the Application and in lieu thereof adopted the recommendation of the Technical Staff. (Exhibit 12(b))

(5) No one appeared in opposition to the instant request at any of the hearings held by this Examiner.

(6) At the start of the first evidentiary hearing it was determined that the Applicant had not posted the site for the variance request, as required by the Zoning Ordinance. As a result, a second hearing was held. At the conclusion of that hearing the record was left open to permit the submittal of additional exhibits. Conflicting correspondence in the record raised an issue as to whether the use also requires approval of a Tree Conservation Plan. The third hearing was held on July 5, 2017 to discuss this and to

submit revised exhibits. At the close of this hearing the record was left open to receive additional comments from the Technical Staff. The record was closed upon receipt of said comment. (Exhibit 50)

FINDINGS OF FACT

(1) The subject property is trapezoidal in shape and consists of approximately 3.15 acres of land located on the southern side of Mount Calvert Road. The property is improved with a 2,944-square-foot single-family detached dwelling, accessed via a 12-foot-wide inverted horseshoe driveway from Mount Calvert Road. The site has been used since 1996 as a Congregate Living Facility for eight persons, a permitted use in the O-S Zone, although Applicant did not purchase the site until 2006.

(2) It was ultimately decided that the site is subject to the Woodland and Wildlife Habitat Conservation Ordinance because the property is larger than 40,000 square feet in size, and has more than 10,000 square feet in woodlands. (Exhibit 37 (a)) A National Resource Inventory (NRI) Equivalency Letter was approved for the site. (Exhibit 8)

Neighborhood and Surrounding Uses

(3) The neighborhood is bounded on the north by Holly Tree Lane; on the south by Croom Airport Road; on the east by Duvall Road; and, on the west by Croom Road. The neighborhood is residential in character and is predominately developed with a mix of single-family detached dwellings.

(4) The subject property is surrounded by large lot single-family detached dwellings in the O-S Zone. (Exhibit 11, pp. 23-26)

Master Plan and Sectional Map Amendment

(5) The 2013 Subregion 6 Master Plan and Sectional Map Amendment ("SMA") designate the property as rural. The SMA retained the subject property in the O-S Zone.

(6) The 2014 Prince George's County General Plan ("*Plan Prince George's 2035*") designates the site as Rural and Agricultural and Parks and Open Space.

Applicant's Proposal

(7) Charlotte Branch is the owner and operator of Castles of Love Assisted Living Homes, Inc. (the assisted living facility). The State Department of Assessments and Taxation has certified that the corporation is “in good standing ... and duly authorized to ... transact business in Maryland.” (Exhibit 33 (b))

(8) Ms. Branch purchased the property in 2006. At that time there was an existing Congregate Living Facility for eight (8) residents. The Zoning Ordinance permits a Congregate Living Facility for up to eight elderly or disabled residents by right in the O-S Zone. Applicant seeks approval of a Special Exception to expand from eight (8) to sixteen (16) elderly residents.

(9) The requested use will not require an addition or expansion to the building. Applicant submitted a floor plan for the one-story structure, with basement. (Exhibit 31) There will be 3 bedrooms, with 2 beds in each, on the first floor; 3 bedrooms, with 2 beds each, on the basement level; and 2 private rooms on the basement level that will be occupied by Ms. Branch or employees on site. (March 9, 2017 T.11, 12)

(10) Applicant currently has two full- time employees and a part-time (relief) employee. (March 9, 2017 T. 11) She will hire two more employees if the Application is approved. (March 9, 2017 T, 12)

(11) Ms. Branch testified that Applicant provides a much needed service in the area:

[O]ur residents live there, and we are responsible for, to varying degrees based on their needs, for bathing, feeding, meal preparation, medication administration, social activities, getting them to doctor's appointments or having specialty doctors and therapists come into the facility as the need arises....

[W]e are currently limited to eight [residents] by licensure, and ... right now I have a waiting list. That's why we're coming ... for the 16 – and we see the need growing almost daily....

In fact, one of my neighbors wants her mother to come in ... and I've had several people out ... in that particular community approach us

(March 9, 2017 T.6-7)

(12) Applicant's witness, Mr. Cleve Stover, was accepted as an expert in the area of urban planning. He prepared the site plans and accompanying documents in support of the Application. He noted that he agreed with all of Staff's recommended conditions,

with the exception of 1(g) concerning the driveway aisle. The Special Exception Site Plan and Tree Conservation Plan were revised to reflect the remainder of Staff's recommended conditions.

(13) Mr. Stover explained that Applicant could not satisfy condition 1 (g) because it would require removing all of the shrubbery in the area (which is adjacent to a forest stand), relocation of a utility pole, removal of a brick column mailbox, and would detract from the residential character of the area. (Exhibit 29 (b); March 9, 2017 T.24-27) Applicant proffered to resolve the Staff's access concerns by revising the Site Plan to note that the existing 12-foot- wide driveway will be one-way. (Exhibit 27(a))

(14) Applicant originally filed a Tree Conservation Plan ("TCP") but also placed a Letter of Exemption in the record that indicated that a TCP is not required. This Examiner sought clarification from Staff and ultimately held a third hearing to clarify the discrepancy. By that time Applicant agreed with Staff that a TCP is required and submitted one that addressed all of Staff's concerns, as noted *infra*. (Exhibits 46(a) and (b))

Variance

(15) Section 27-442 of the Zoning Ordinance notes that the net lot area for lots in the O-S Zone is 5 acres. The subject property is approximately 3.15 acres. A 1.85-acre variance is requested.

(16) Pursuant to Section 27-230(a) of the Zoning Ordinance, the variance must satisfy the following provisions:

A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:

- (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;
- (2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and
- (3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

(17) Applicant believes it satisfies these provisions, for the following reasons:

The Property has exceptional conditions not ordinarily found on lots in the O-S Zone. The parcel is 3.15 acres, 1.85 acres less than the 5 acre minimum. The property was legally subdivided per 24-107 (c)10 as a result of a foreclosure proceeding pursuant to a Deed of Trust in 1992. There will be no adverse environmental impact....

The strict application of the Zoning Ordinance would result in undue hardship upon the

owner of the Property. The plan, as submitted, reflects a reasonable use of the property as a congregate living facility and is in keeping with the character of the existing neighborhood. The applicant is seeking to double the capacity of the facility at the Property. The strict application of the Zoning Ordinance would prevent the applicant from expanding needed services to the community and possibly lead the applicant to cease operations of a business that has legally operated since 1996....

The variance will not substantially impair the integrity of the General Plan, *Plan Prince George's 2035*, or The 2013 *Subregion 6 Approved Master Plan and Sectional Map Amendment*. *Plan Prince George's 2035* designates this property as Rural and Agricultural and Parks and Open Space. The plan description for the Rural and Agricultural Land Use is "Low-density residential uses with areas of agricultural and forestry production. Agricultural land ..., forest, and very low-density residential with a density per acre of less than 0.5." The use of the site for a congregate living facility for sixteen (16) persons is a non-intensive residential use that is permitted in the Open Space (O-S) residential zone with a Special Exception....

Granting of the variance is appropriate because the Property was legally subdivided pursuant to Section 24-107(c)10, there is no additional square footage being proposed to any of the existing structures, and the proposed use is permitted ... in the O-S Zone. Validation of the property in its current configuration will allow the applicant to continue her pursuit of a reasonable increase of residents for a congregate living facility....

(Exhibit 11, pp. 74-75)

Agency Comment

(18) The Technical Staff recommended approval of both requests, with conditions, reasoning as follows:

The strict application of the Zoning Ordinance would result in undue hardship upon the owner of the property. The plan, as submitted, reflects a reasonable use of the property as a congregate living facility and is in keeping with the character of the existing neighborhood.... The strict application of the Zoning Ordinance would prevent the applicant from expanding needed services to the community and possibly lead the applicant from expanding needed services to the community and possibly lead the applicant to cease operations of a business that has legally operated since 1996

Granting of the variance is appropriate because the property was legally subdivided..., there is no additional square footage being proposed to any of the existing structures, and the proposed use is permitted by right in the O-S Zone. Validation of the property in its current configuration will allow the applicant to continue pursuit of a reasonable increase of residents for a congregate living facility for a total of up to sixteen residents....

A Special Exception use is considered compatible with uses permitted by-right within the O-S Zone, as long as specific criteria are met. Unless unique adverse impacts are identified, the Special Exception may be approved.... The subject use, a congregate living facility, has been in operation with eight residents at this location since 1996 per permit 1276-96-4. The impacts associated with this expanded use of service ... are typical and would be similar regardless of its location in the O-S Zone....

(Exhibit 11, p. 16)

(19) The Special Projects Section noted that the request will have no impact on public facilities. (Exhibit 11, pp.52-53) The Transportation Planning Section also noted that the request is not likely to have a negative impact on [public health, safety or welfare] from a transportation perspective.“ (Exhibit 11, p.47)

(20) The Environmental Planning Section noted that “there are no roads nearby which are classified as an arterial or higher that require evaluation as a source of traffic generated noise”, “[t]he proposed use is not expected to be a noise generator”, and “there are no rare, threatened, or endangered species found to occur” near the site. (Exhibit 11, p. 8) However, the Environmental Planning Section did raise several concerns with the Forest Stand Delineation (“FSD”) Plan and the Tree Conservation Plan initially submitted by Applicant. (Exhibit 15, pp. 36-37) On August 14, 2017, the Environmental Planning Section found that the revised Type 2 Tree Conservation Plan (TCP2-006-2016) and the revised Landscape Plan were in full compliance with the Technical Staff’s recommended conditions of approval 1-4. (Exhibit 50)

(21) The Department of Permitting, Inspections and Enforcement (“DPIE”) issued a stormwater management concept approval letter for the subject property noting that the request is exempt from stormwater management requirements since there will be “less than 5,000 square feet” of disturbance. (Exhibit 44)

(22) The Transportation Planning Section reviewed the application for compliance with the 2009 Countywide Master Plan of Transportation (“MPOT”) and recommended a condition that applicant make a financial contribution for the placement of a “share the road with a Bike” sign, reasoning as follows:

The MPOT and area master plan designate Mt. Calvert Road as a master plan bikeway (see MPOT map). This road is located directly off MD 382, which is a portion of the Star Spangled Banner Scenic Byway and bike route. Mt. Calvert Road provides cyclists with access to historic sites, parkland, and the trails and other park facilities at Jug Bay. The road is currently a low-volume open section roadway that functions well for cyclists. No bicycle signage is currently in place along the road and one “Share Road with a Bike” signage assembly is recommended along the site’s frontage.

(Exhibit 11, pp.48-49)

(23) The Technical Staff referred the request to the Health Department, which provided the following comment:

The Maryland Department of the Environment requires that the on-site sewage disposal systems of assisted living facilities have a minimum wastewater design flow of 100 gallons per day per bed space. The Health Department has reviewed the property's records on its current septic system. It was determined that the current septic tank size of 2000 gallons and drain field design specifications, are suitable to sustain the potential increase in wastewater flow....

(Exhibit 11, p. 12)

LAW APPLICABLE

(1) A Congregate Living Facility for more than eight (8) elderly or physically handicapped residents is permitted by Special Exception in the O-S Zone in accordance with the requirements of Sections 27-317, 27-344, and 27-425(a) 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 in accordance with the requirement of Subtitle [24-130\(b\)\(5\)](#).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

(1) Where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or

(2) Where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) Section 27-344 (a) provides as follows:

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 27-425(a) provides as follows:

(a) **Purposes.**

(1) The purposes of the O-S Zone are:

(A) To provide for low density and development intensity as indicated on the General or Area Master Plans; and

(B) To provide for areas which are to be devoted to uses which preserve the County's ecological balance and heritage, while providing for the appropriate use and enjoyment of natural resources.

(2) The use of the O-S Zone is intended to promote the economic use and conservation of agriculture, natural resources, residential estates, nonintensive recreational uses, and similar uses.

(5) As noted above, the Applicant 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).

Variance

(6) A variance may be granted if it satisfies the provisions of Section 27-230 (a) of the Zoning Ordinance, *supra*.

(7) Court cases have held that a variance should not be granted unless the need to justify the request is substantial, and not merely for the applicant's convenience. Belvoir Farms Homeowners Association v. North, 355 Md. 259, 734 A.2d 227 (1999); Mills v. Godlove, 200 Md. App. 213, 26 A. 3d 1034 (2011). Moreover,

As a general rule, [variances] are granted sparingly, and under exceptional circumstances. To do otherwise would decimate zonal restrictions and eventually destroy all zoning regulations, and thus detrimentally affect the marketability of property within zoned areas. On the other hand, the existence of an unnecessary hardship usually justifies the granting of an exception. The criterion for determining unnecessary hardship is whether the applicable zoning restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership.

(Marino v. City of Baltimore, 215 Md. 206, 216-217, 137 A.2d 198 (1957) ;See, Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County, 407 Md. 53, 962 A.2d 404 (2008))

(8) "Practical difficulties" or "unnecessary hardship" were defined in Carney v. Baltimore, 201 Md. 130, 137 (1952), as follows:

The expression "practical difficulties or unnecessary hardship" means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant. Exceptions on the ground of "practical difficulties or unnecessary hardships" should not be made except where the burden of the general rule upon the individual property would not, because of its unique circumstances, serve the essential legislative policy, and so would constitute an entirely unnecessary and unwanted invasion of the basic right of private property.

Special Exception

(9) It has been predetermined by the District Council that a Congregate Living Facility in the O-S Zone is conditionally compatible with uses permitted as of right in that zone. If the Applicant establishes that the use 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 O-S 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))

CONCLUSIONS OF LAW

(1) Once the variance is addressed the instant Application can be found to be in conformance with the general purposes of the Zoning Ordinance, Section 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 in the community by providing safe, comfortable housing. Expanding it 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 was no evidence presented that this use has produced any negative impacts on the health, safety or welfare of adjacent residents.

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

Plan 2035 and the *2003 Subregion 6 Master Plan* recommend lower density/ rural residential use of the subject property. This slight expansion of a current use within the footprint of an existing house will not affect the low-density rural character of the area. This purpose is therefore, met.

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

The Application proposes a slight expansion of the existing Congregate Living Facility and Staff has acknowledged that it will have no impact on public facilities or services.

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

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

The proposed Special Exception provides adequate light, air and privacy since there is no change to the footprint of the existing structures.

(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 will have minimal impact on adjoining streets and properties. No changes are proposed to the existing building (only four parking spaces will be added), and the addition of required landscaping will soften the appearance of the buildings on this site from views from adjacent properties.

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

The proposed development must conform to all applicable fire regulations and is exempt from stormwater management requirements. There is no floodplain on the property, as identified in Note 14 on the Site Plan (Exhibit 27(a)).

(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.

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

The proposed use will contribute to the tax base and broaden it since Applicant must employ reliable help. It will also 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 3.15 acres in size. The existing Congregate Living Facility is the size of a large home. The instant Application does not overcrowd the land, utilizing minimum lot coverage. Accordingly this purpose is met.

(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, the instant request will generate very little traffic. Accordingly, this use 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 use provides housing for some of our neediest citizens. This purpose is, therefore, satisfied.

(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;

The instant request expands an existing use (within an existing residence) on a site that has no sensitive environmental features. In addition, noise is not typically an issue associated with 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 an established neighborhood of single-family homes, and there will be no increase in lot coverage.

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

Expanding the existing use within the footprint of the existing house 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.

(Section 27-317(a)(1))

(2) The request satisfies the purposes of the O-S Zone found in Section 27-245 (a). The expansion of the existing facility is still low-density development; and the request will not require any change to the exterior of the existing dwelling, thereby ensuring no additional impact upon natural resources in the area.

(Section 27-317 (a)(1))

(3) If the variance is approved, the proposed use and accompanying Site and Landscape Plans are in conformance with all applicable requirements and regulations of the Zoning Ordinance. (Section 27-317(a)(2))

(4) The proposed use will not substantially impair the integrity of the 2013 Subregion 6 Master Plan and SMA. 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 institutional use in a residential zone in a way that will not impair either Plan's rural, low-density vision for the area. (Section 27-317(a)(3))

(5) The size of the facility proposed will not be increased, but is currently sufficient to meet the needs of sixteen (16) residents. The referral replies received by the Technical Staff and the record in this case indicate that the expansion of services will not adversely affect the health, safety, or welfare of residents in the area. (Section 27-317(a)(4))

(6) In general, Congregate Living Facilities for the elderly are compatible neighbors that generate little noise or traffic. The proposed use can be accommodated on the site with no 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 use is negligible. All of these factors support a finding that the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))

(7) The subject property is subject to the provisions of the Prince George's County Woodland Conservation Ordinance and the request includes a Tree Conservation Plan, TCP2-006-2016. The Type 2 Tree Conservation Plan was reviewed with the proposed Special Exception Site Plan. (Section 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 accompanying TCP 2. Therefore, the regulated environmental features of the site have been fully preserved in a natural state. (Section 27-317(a)(7))

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

(10) The request satisfies the provisions set forth in Section 27-344. Applicant has shown a demonstrated need for the facility since it has existed under its ownership since 2006 and under prior ownership since 1996, and there is a current waiting list. (Section 27-344 (a) (i)) There are no licensing requirements in Subtitle 12 of the Prince George's County Code. (Section 27-344(a) (2)) Finally, each bedroom in the facility is in excess of

172 square feet in site. (Exhibit 28) 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. (Section 27-344 (a) (3))

(11) Applicant's request for variance meets the strictures of Section 27-230 (a). A legal subdivision that resulted from a foreclosure proceeding necessitated the reduction in size, resulting in a 3.15- acre site instead of the requisite 5 acres. The court-ordered reduction occurred prior to Applicant's purchase of the site. This is an extraordinary situation or condition beyond Applicant's control. The strict application of the Zoning Ordinance would result in undue hardship, since Applicant would be precluded from legally operating any use on site. Finally, the variance will not impair the intent, purpose, or integrity of the General Plan or Master Plan since both designate the area as rural/agricultural and encourage low-density use. The instant request will double the amount of residents but will not change the foot print of the dwelling nor involve further development of the site (other than delineating four parking spaces). It will, therefore, retain its present rural character of a large home on a large lot.

DISPOSITION

Special Exception 4770, VSE-4770 and TCP2-006-2016 are Approved, subject to the following Conditions:

- (1) Revise the Site Plan to include the words "Special Exception".
- (2) In conformance with the 2009 Countywide Master Plan of Transportation and the 2013 Subregion 6 Master Plan and Sectional Map Amendment, Applicant and/or its heirs, successor's and/or assignees shall provide a financial contribution of \$420.00 to the Department of Public Works and Transportation or Department of Permitting, Inspections and Enforcement (as applicable) for the placement of one "Share the Road with a Bike" sign assembly along Mount Calvert Road. The Special Exception Site Plan shall be revised to add a note to this effect, and payment shall be made to the appropriate agency prior to the issuance of any permits.
- (3) The revised Special Exception Site Plan shall be submitted to the Office of the Zoning Hearing Examiners for review, approval, and inclusion in the record, prior to the issuance of any permits.

[Note: The Approved Special Exception Site and Landscape Plans are Exhibits 27(a), (f) and (g); the Tree Conservation Plan is Exhibit 46(a)-(b), and the Floor Plan is Exhibit 28]

