



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item # 6  
09/11/03

September 5, 2003

**MEMORANDUM – SPECIAL EXCEPTION MODIFICATION**

**DATE:** September 5, 2003  
**TO:** Montgomery County Planning Board  
**VIA:** John Carter, Chief, Community-Based Planning Division *JC*  
Sue Edwards, Team Leader, I-270 Corridor Team *SE*  
**FROM:** Nellie Shields Maskal, Community-Based Planning Division *NSM*  
**SUBJECT:** **Board of Appeals Petition No. 2423–A (Special Exception Modification);** Meadow Ridge Seniors Villas, LLC, applicant, requests a modification to proposed housing and related facilities for elderly or handicapped persons; R-200 Zone, Wightman and Prathertown Roads, Gaithersburg Vicinity Master Plan Area

**FILING DATE:** June 3, 2003  
**PUBLIC HEARING:** September 24, 2003 at the Hearing Examiner

**STAFF RECOMMENDATION:**

**Approval** of the Special Exception Modification

**PROPOSAL**

The applicant, Meadow Ridge Seniors Villas, LLC is seeking a modification to Special Exception No. S-2423 approved November 20, 2000, by the Board of Appeals. The subject parcel includes 5.75 acres in the R-200 Zone.

Elements of the original special exception include: 10 single-family style villas with attached garages, each containing three to four dwelling units, for a total of 33 units. The project is designed for independent living for residents age 62 and older or handicapped in a single-family residential setting. It will also contain 58 parking spaces (6 more spaces than required) for use by the residents, visitors and guests, and a bus stop located along the main entrance road serving the project (See Figure 1 – 2000 Special Exception Site Plan).

The proposed modification would allow the applicant to sell the villas as condominiums rather than to lease them as rental units. No additional construction or changes in the approved site plan are proposed. In addition, no other characteristics of the original special exception will be altered as a result of this modification.

**Background** – On November 20, 2000, the Board of Appeals granted Special Exception No. S-2423 to permit the construction of villas as residences for elderly (over 62 years of age) or handicapped persons. The opinion of the Board of Appeals is included as Attachment A. The applicant has requested a modification to S-2423 to allow for the sale of the villas as condominiums rather than leasing them as rental units.

On August 21, 2002, the applicant filed a minor modification request to allow for either the sale or rental of the proposed villas as the market dictates. On October 2, 2002, the Board of Appeals denied this request. The Board held a public hearing on this matter on March 12, 2003, and again voted to deny the modification request due to the lack of substantive evidence that the request would not increase traffic if the same project were constructed as condominiums rather than rental apartments. The Board of Appeals instructed the applicant to file a major modification request that would include a traffic analysis showing the asserted lack of adverse traffic impacts.

It should be noted that, in 2001, the Planning Board approved Preliminary Plan No. 1-01073 (Meadow Ridge Seniors Villas) for the subject property. A detailed discussion of prior regulatory actions is discussed in the Previous Actions Section of this report.

**Site Description** – The subject 5.75-acre property consists of Lots 1 and 2, 4-11, and Parcel A, Block B, Prathertown Subdivision located at 9700-9704, 9706, 9707, 9709, 9711 and 9713 Cordony Court (See Figure 2 – Vicinity Map). Grading and construction work have begun on the property and marketing of the villas has commenced. The site has approximately 230 feet of frontage on Wightman Road and approximately 640 feet of frontage on Prathertown Road. The topography reflects a slope in grade from the northwest corner to the east and southeast draining into an unnamed tributary of Great Seneca Creek. There are 1.30 acres of mixed hardwood forest located almost entirely within the stream valley.

**Neighborhood Description** – The surrounding neighborhood consists of scattered, smaller, single-family detached homes, the older Prathertown community, the large lot Goshen Estates Subdivision, and the mixed-use planned development of Montgomery Village (See Figure 2 – Vicinity Map). The Prathertown community, located south and east of the subject property, is an older settlement in the R-200 Zone. The Goshen Estates Subdivision is located to the west of the site in the R-200 Zone. To the northeast, between Wightman and Warfield Roads, is the site of the proposed 20-acre Montgomery Village Local Park. Planned facilities include a 100-car parking lot, ball fields, trails, playground, and gazebo.

**Elements of the Proposal** – This modification requests only that the applicant be allowed to sell the proposed villas as condominiums rather than lease them as rental units. No additional construction or changes in the approved site plan are proposed. In addition, no other characteristics of the original special exception will be altered as a result of this modification.

**Previous Actions** - Prior to filing Special Exception Case No. S-2423, a preliminary plan was approved in 1989 and a site plan approved in 1990 for 11 single-family detached units for the subject site. In 1995, a record plat was submitted and signed by the Planning Board. The Planning Board approved the first two requests for a three-year extension for the preliminary plan, but in 1996 denied the third requested extension. Recordation occurred prior to the expiration of the second extension. One single-family detached unit was subsequently sold.

Concurrent with processing of Special Exception Case No. S-2423, Pre-Preliminary Plan No. 7-00026 was submitted and reviewed for comments by the Development Review Committee at its meeting on March 13, 2000. After the Board of Appeals granted the special exception, the Planning Board approved on October 1, 2001, Preliminary Plan No. 1-01073 (Meadow Ridge Senior Villas).

## **ANALYSIS**

**Master Plan** – The subject property is located on the northwestern edge of the Gaithersburg Vicinity Master Plan Area near Montgomery Village as shown in Figure 2. The 1985 Gaithersburg Vicinity Master Plan designates the subject property as Low-density Residential with a zoning designation of R-200. Housing and related facilities for elderly or handicapped persons are allowed by special exception in that zone. The Master Plan does not give guidance in terms of special exception uses for the subject property. A Countywide objective of the Master Plan is to increase the County's housing stock. The proposed modification does not conflict with this intention of the Master Plan.

**Site Development Relationship to Seneca Greenway** – The 1998 Park, Recreation, and Open Space Master Plan recommends a 25-mile greenway along Seneca Creek to provide quality recreation opportunities as well as to conserve natural resources. The Master Plan encourages public dedication of greenways through the subdivision process where they provide community connections to parkland. The applicant agreed to provide a nature trail within the proposed development at the time of preliminary plan approval.

**Development Standards** – The proposed special exception continues to satisfy the required development standards for the zone and the use. The proposed buildings will be set back 40 feet from the street and 25 feet from the side and rear lot lines.

**Site Layout, Circulation, and Pedestrian Access** – The proposed site layout continues to achieve a reasonable arrangement of buildings clustered around parking and driveways. The recreation hall is located at the entry of the development within easy walking distance from the units. Several interior open spaces are provided in safe and central locations to serve as gathering places. As seen from the surrounding community and along Wightman Road, the proposed building design is an arrangement of 3 to 4 units configured in a way that suggests 10 residential buildings. Vehicular circulation is via a private road with a turnaround. Sidewalks are provided along Wightman Road and Prathertown Road.

**Landscaping and Lighting** – Staff finds the submitted landscaping and lighting plan acceptable as shown in Figure 3. The landscape plan continues to establish compatibility along Wightman Road and Prathertown Road by providing extensive plantings of evergreen and deciduous shade trees.

**Transportation** – Transportation Planning staff concludes that the proposed modification will have the identical traffic impact, as does the original special exception (See Attachment B – Transportation Planning Staff Report).

## **Environment**

### Forest Conservation

This modification request is subject to a previously approved Final Forest Conservation Plan (FCP) that included a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), and a Landscape and Lighting Plan. As per the FCP, the applicant was required to save the entire forest on site (1.62 acres) as a Category-1 Forest Conservation Easement. As mitigation for a slight encroachment of the stormwater management facility into the stream valley buffer, the applicant was required to reforest 0.50-acre of the stream valley buffer in areas that were not then forested, remove or mulch all trash and debris within the conservation easement area (primarily along the stream), and control exotic invasive plant species within the entire conservation easement area. The applicant complied with these requirements

### Stormwater Management

The applicant has an approved stormwater management plan and the required permitting from the Montgomery County Department of Permitting Services. Water quality and quantity controls for the site's wastewater and storm runoff are being provided via surface sand filters and an on-site detention pond.

### Watershed Protection

The subject property is in the Upper Great Seneca Creek subwatershed of the Great Seneca Creek watershed. Impervious surface area is low at five percent as land cover consists mainly of woodlands, cropland, and lawns/open land. The Countywide Stream Protection Strategy assesses the Upper Great Seneca Creek tributary as having good stream and habitat conditions and classifies it as a Watershed Protection Area.

**Community Concerns** – Staff is in receipt of several letters from community members (See Attachment C). In these letters, residents have expressed a number of concerns including traffic impact, the affect of the application on the character of the surrounding neighborhood, and the nature of the proposed use. Staff received one letter of support for the application.

As of the date of this report, staff has received no written comments from the Greater Goshen Civic Association. However, several members have called staff expressing

opposition to the application. The Association members expressed concern about altering the form of ownership of the property from one corporate owner to 33 individual owners. If the Hearing Examiner believes this is an issue and merits additional review, Staff feels that it should be best handled by the County Attorney's Office.

**Inherent/Non-inherent Adverse Effects** – The inherent and non-inherent adverse effects of a special exception must be considered on nearby properties and the surrounding neighborhood at the proposed location, regardless of the adverse effects the use might have if established elsewhere in the R-200 Zone.

Section 59-G-1.2.1 of the Zoning Ordinance states:

Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics are not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, along or in conjunction with the inherent effects are a sufficient basis to deny a special exception.

Staff concludes that there are no non-inherent adverse effects associated with this application, as conditioned, that warrant denial. No changes in the approved site plan or operational characteristics are proposed. Therefore, no additional unanticipated impacts or non-inherent adverse effects will occur.

**Compliance with General and Specific Special Exception Provisions** – Staff has reviewed the petition for compliance with the applicable special exception provisions. As noted in Attachment D, all general and specific requirements for housing and related facilities for elderly or handicapped persons will be satisfied.

**Conclusions** – Staff finds that the special exception satisfies all general and specific requirements for the use found in Section 59-G-1.21 and 59-G-2.35 of the Zoning Ordinance. Therefore, staff recommends approval.

#### Attachments

Figure 1: 2000 Special Exception Site Plan

Figure 2: Vicinity Map

Figure 3: Approved Landscape and Lighting Plan

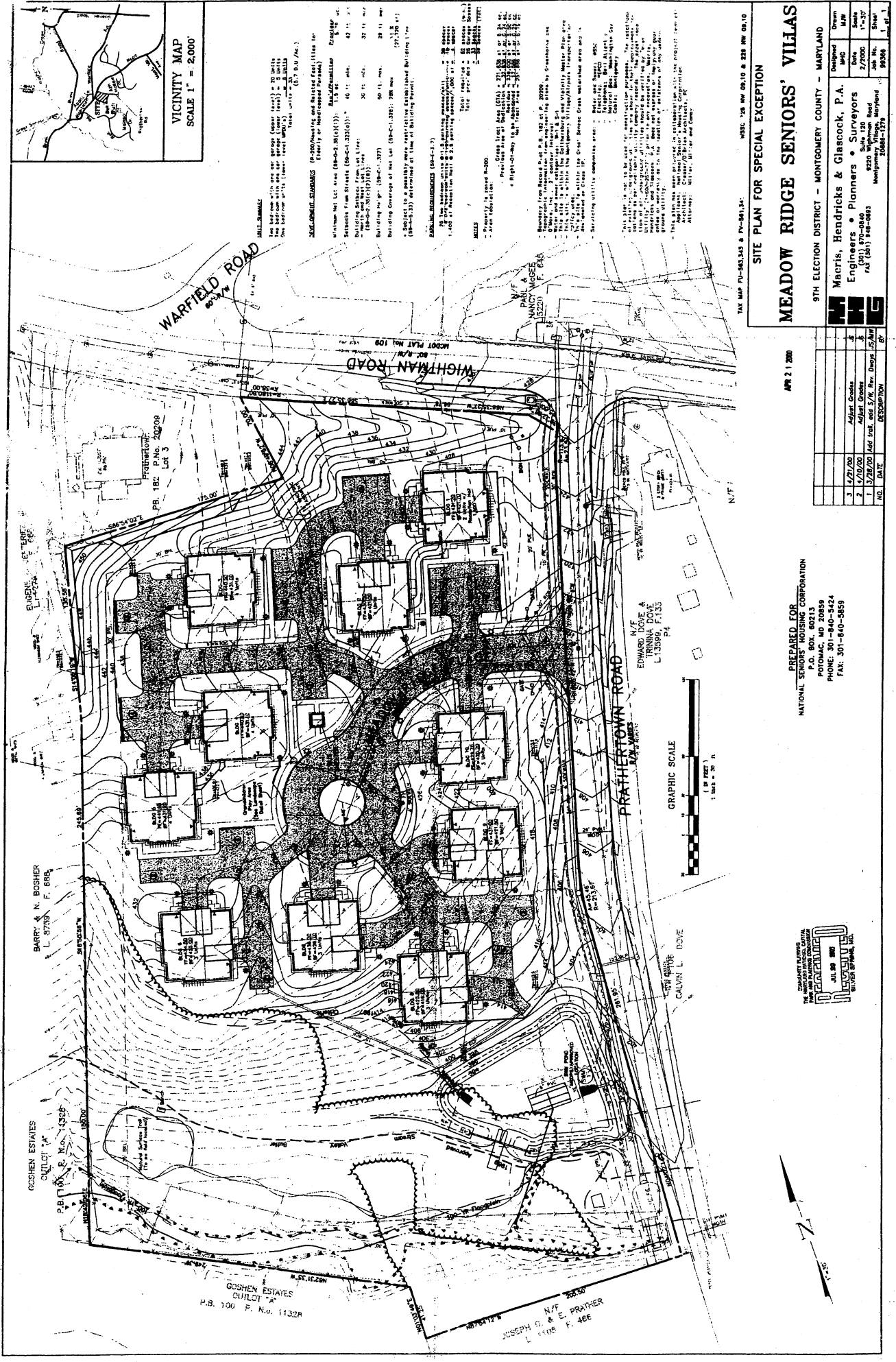
Attachment A: Board of Appeals Opinion (Case No. S-2423)

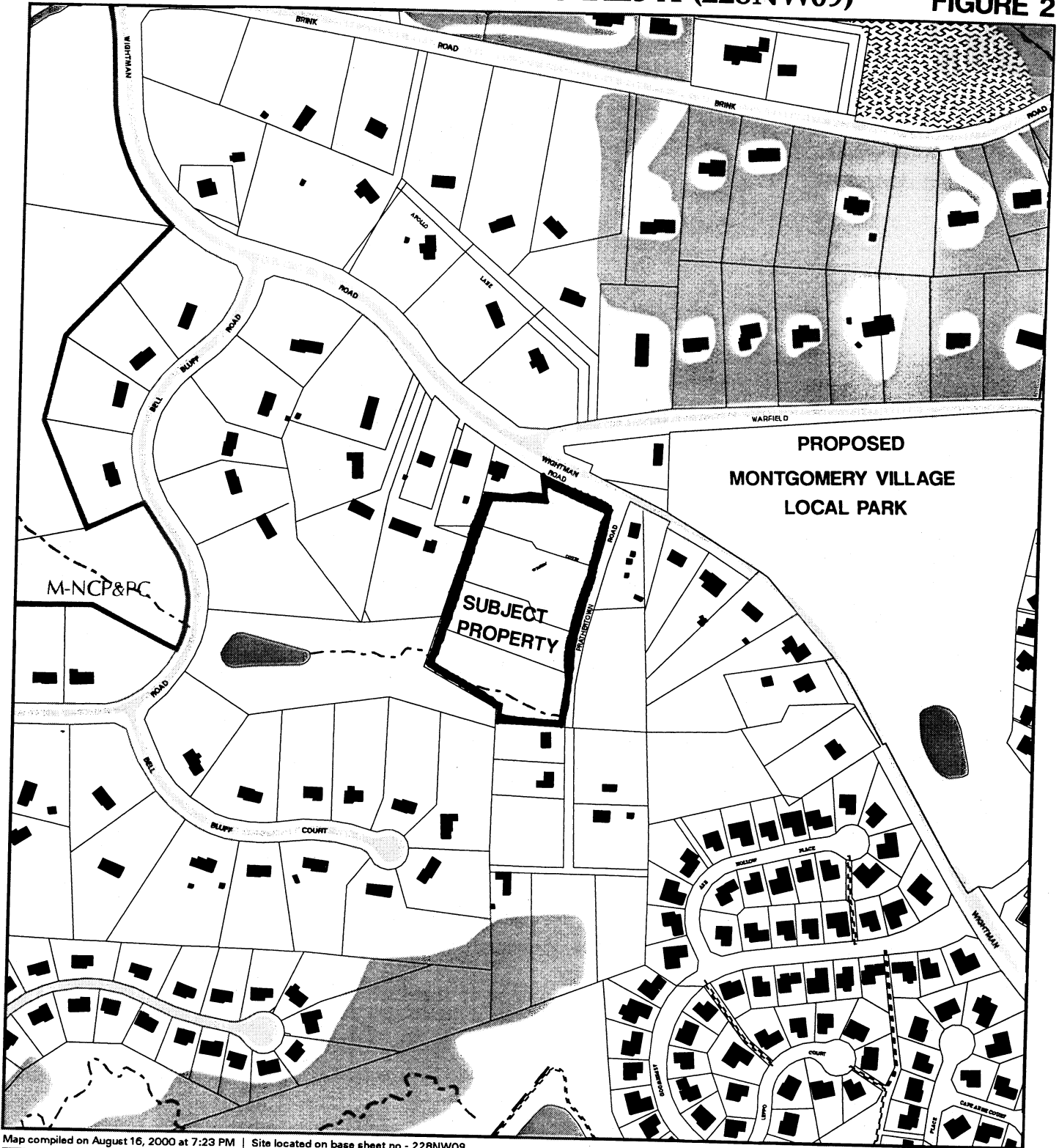
Attachment B: Transportation Planning Staff Report

Attachment C: Letters from the Community

Attachment D: General and Specific Special Exception Provisions

NSM:tv: N:\divcp\S-2423A.doc





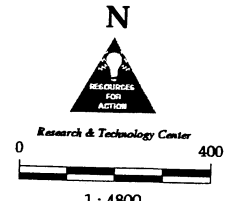
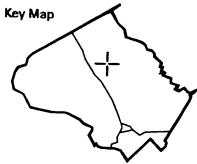
Map compiled on August 16, 2000 at 7:23 PM | Site located on base sheet no - 228NW09

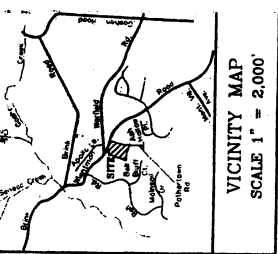
**NOTICE**

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCP&PC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

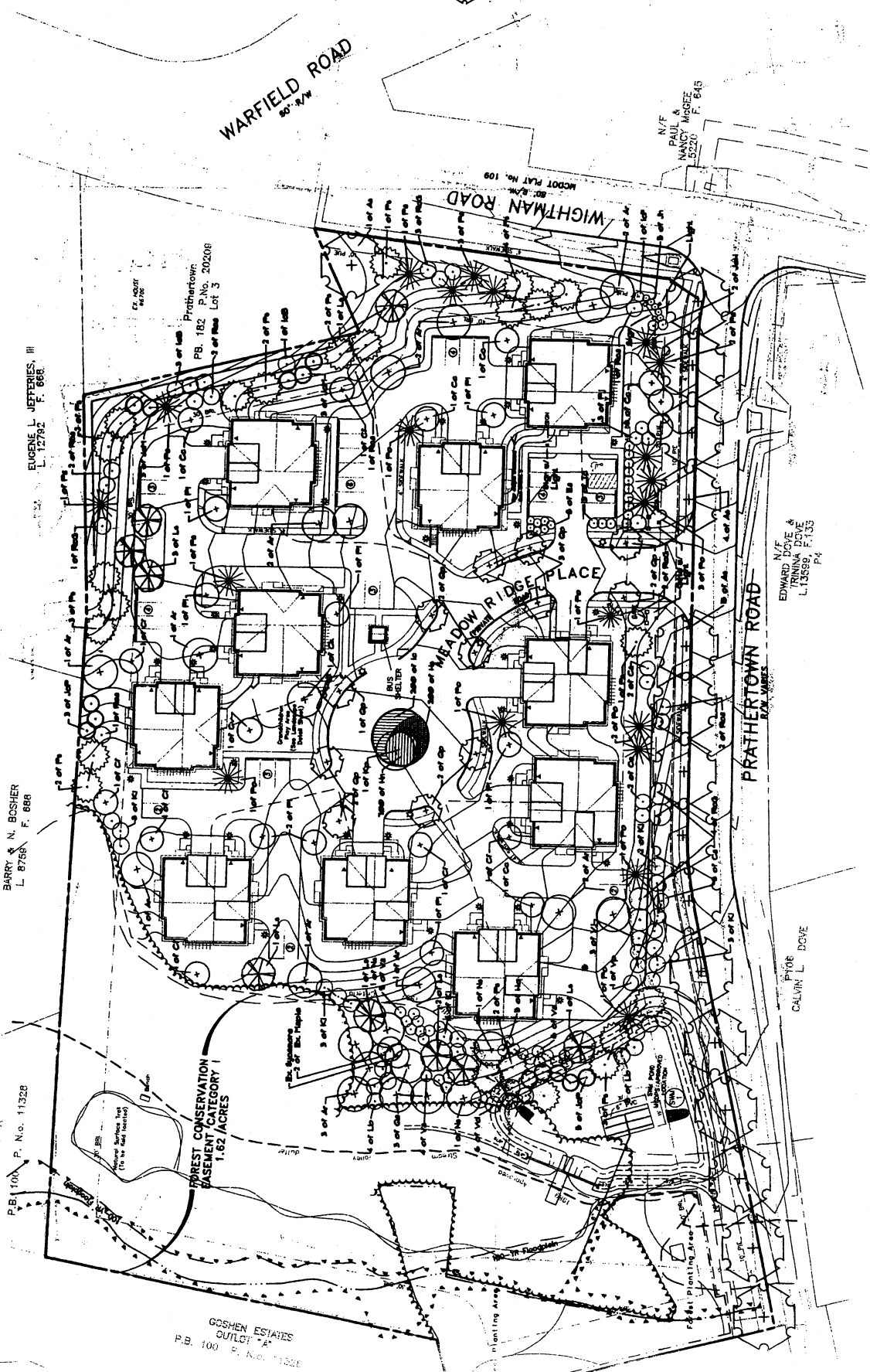
This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998





VICINITY MAP  
SCALE 1" = 2,000'

- KEY**
- ⊙ EVERGREEN TREES
  - ⊕ ORNAMENTAL TREES
  - ⊗ SHADE TREES
  - ⊙ EVERGREEN HEDGES
  - ⊕ DECIDUOUS HEDGES
  - ▨ GRASS COVERS
  - ⊙ 12" Hgt. STREET LIGHT
  - ⊕ 8' Hgt. HOUSE LAMP
  - ⊗ FLOOD LIGHT



EUGENE L. JEFFERIES, III  
L. 12792 F. 668

BARRY A. N. BOSHER  
L. 8758 F. 688

P.B. 100 P. No. 11328

COCHEN ESTATES  
OUTLOT "A"  
P.B. 100 P. No. 11328

WARFIELD ROAD  
50'-7 1/2'

WIGHTMAN ROAD  
50'-6 1/2'

N/E  
PAUL &  
NANCY MCGEE  
63220 F. 645

N/E  
EDWARD DOVE &  
FRANNA DOVE  
L. 13589, F. 135

PRATHERTOWN ROAD  
24' WIDE

FRAN  
CALVIN L. DOVE

TAX MAP FU 563,343 & FV 561,341  
WSSC 228 HW 09.10 & 228HW 09.10  
LANDSCAPE & LIGHTING PLAN FOR SPECIAL EXCEPTION

**MEADOW RIDGE SENIORS' VILLAS**

9TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND  
Macris, Hendricks & Glascock, P.A.  
Engineers • Planners • Surveyors  
(301) 870-0848  
9220 Wightman Road  
Montgomery Village, Maryland  
Tel. 301-848-0883

Drawn	Checked	Date	Scale	Sheet
ES	ES	JULY 2000	1"=30'	1
ES	ES	APR 2000	1"=30'	2
ES	ES	APR 2000	1"=30'	3

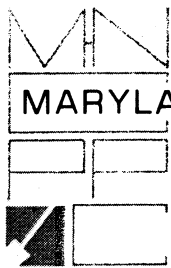
PREPARED FOR  
NATIONAL SENIORS LIVING CORPORATION  
P.O. BOX 801  
POTOMAC, MD 20859  
PHONE: 301-840-5424  
FAX: 301-840-5859

GRAPHIC SCALE  
1" = 20' FT.



**FIGURE 3**





THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Revised August 29, 2003  
August 20, 2003

**MEMORANDUM**

TO: Nellie Maskal, Planner  
Community-Based Planning Division

VIA: Daniel K. Hardy, Supervisor *DKH*  
Transportation Planning

FROM: Ed Axler, Coordinator/Planner *EA*  
Transportation Planning

SUBJECT: Special Exception Case No. S-2423-A  
Meadow Ridge Seniors' Villas  
9700-9713 Cordonary Court, Gaithersburg  
Montgomery Village/Airpark Policy Area

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This memorandum supplements Transportation Planning's memoranda prepared in 2000 and 2001, regarding staff's review of the Special Exception Case for the independent-living elderly housing development. Regarding this special exception modification to permit condominiums for sale rental units instead of rental units condominiums, Transportation Planning's staff recommendations are as follows:

1. The same recommendations from the previous Transportation Planning's memoranda (attached) which recommended limiting the special exception use to 33 independent-living elderly units and limiting employees' work hours so that they do not travel during the weekday morning and evening peak periods:
  - a. Original memorandum dated March 30, 2000: Staff's adequate public facilities (APF) review of Special Exception Case No. S-2423.
  - b. Supplemental memorandum dated April 14, 2000: supplemented the March 30, 2000, memorandum, to analyze the type and location of the 1998-to-1999 accidents along Wightman Road between Brink Road and Goshen Road.
  - c. Memorandum dated September 20, 2001, for staff's APF review of Preliminary Plan No. 1-01073, Meadow Ridge Seniors' Villas: included upgrading Prathertown Road, assessing the need for (and providing, if needed) deceleration and/or acceleration lanes along Wightman Road at Prathertown Road, and providing sidewalks.

2. Local Area Transportation Review used trip-generation rates from the Institute of Transportation Engineer's (ITE) Trip Generation Report for elderly housing, land use code 253. ITE's description for this land use refers to "residential units similar to apartments and condominiums" but does not differentiate whether the apartments are being rented or owned.
3. Policy Area Transportation Review condition in the Montgomery Village/Airpark Policy Area remains in a moratorium under the previous FY 2000 *Annual Growth Policy* (AGP) and the current FY 2004 AGP. Currently, the remaining capacity is negative 5,330 housing units under the FY 2004 AGP as of July 31, 2003.

## **DISCUSSION OF PRIOR REGULATORY ACTIONS**

1. Prior to filing Special Exception Case No. S-2423, Preliminary Plan No. 1-89096, Benson Property, was approved on November 11, 1989, and Site Plan No. 8-90002 on September 17, 1990, for 11 single-family detached units. Record Plat No. 2-95182 was submitted and signed by the Planning Board on January 5, 1995. The Planning Board approved the first two requests for a three-year extension for the preliminary plan, but denied the third requested extension on October 10, 1996. However, recordation occurred prior to the expiration of the second extension. One single-family detached unit was subsequently sold to another person.
2. Concurrent with processing of Special Exception Case No. S-2423, Pre-Preliminary Plan No. 7-00026 was submitted and reviewed for comments by the Development Review Committee at its meeting on March 13, 2000.
3. After the Board of Appeals granted the special exception, Preliminary Plan No. 1-01073, Meadow Ridge Seniors' Villas was approved at the Planning Board hearing on October 1, 2001.

EA:ct

Attachments

cc: Malcolm Shaneman  
Ron Welke

August 29, 2003

Nellie Maskal  
Community Based Planning Division,  
MNCPPC  
8787 Georgia Avenue  
Silver Spring, MD 20910

Dear Ms. Maskal:

I am writing regarding the pending request for a major modification made by the new owner of the rental complex presently being developed for elderly and handicapped individuals at the intersection of Wightman and Pratherstown Roads. This major modification to the Special Exception to the Master Plan that was granted to the previous owner, Mr. Koch, requests that the units now be allowed to be sold as condominiums rather than be operated as rental units.

I have a number of significant objections to this pending request based on the abuse of public policy as well as a severely flawed technical analysis.

With respect to the abuse of public policy, first let me state that I am not in any way opposed to the construction of rental housing for the elderly and handicapped nor to the application of the MPDU law that requires a certain number of units be set aside for moderate priced units. However, the original intent of the Special Exception established by the Montgomery County Council was intended *solely* for the purpose of encouraging the building of *affordable rental* units for the elderly and handicapped.

Granting the pending request for a major modification will only serve to pervert this original intent of the Council. The pending request is merely a subterfuge to bypass the restrictions imposed on developers by the Master Plan governing land use in that the Master Plan called for a maximum of ten single-family homes on the subject property so that the development of this property would be consistent with the contiguous developments. Clearly, 33 rental units are in no way consistent with the surrounding single-family homes.

However, as noted above, when the Council enacted the law allowing a Special Exception, it decided that the need for *affordable rental* units for the elderly and handicapped outweighed the necessity for consistent and rational land development guidelines and, therefore, good public policy should override the Master Plan in certain, very restrictive applications. It was on this basis, and only on this basis, that the Appeals Board could grant the Special Exception for the subject property.

The net effect of granting the pending major modification request is to allow one developer, Mr. Koch, to change the Master Plan requirement for no more than ten single-family homes to 33 rental units and, subsequently, allow the next developer to then convert the rental units to condominiums for sale. At a recent public meeting, I raised this point with Council Member Knapp and did not hear him dispute my statement that this process, cited above, is perverting the original intent of the law enacted by the prior Council.

If this process of utilizing a good law to “break” the Master Plan and then, subsequently modify the granted Special Exception into a standard commercial sale well beyond the original Council intent of the subject law, is allowed to go forward, it will significantly erode public confidence in the assurance that the Master Plan preserves the public’s right to expect rational land use.

With respect to the main argument of the present developer, he maintains that the economics of developing rental units for the elderly and handicapped at the subject site, will force him to operate these units at a loss. This is extremely ingenuous of him in that members of our community testified before the Appeals Board in 2001 that this was indeed the case. This assertion was based on a detailed estimate of the costs of developing the rental complex by a licensed contractor. In point of fact, this contractor appealed this issue to the courts in Annapolis.

In light of the heated debate regarding the economics of the *affordable rental* units, overruled by the Appeals Board and the courts, how then can the present developer state with feigned surprise that he now concludes he cannot operate the rental units as permitted by the Appeals Board and the courts? Does he now conclude that our community was correct all the time when we testified before the Appeals Board and when the contractor, cited above, went to court? This is best described as an extreme example of gall!

If the present developer, presumed to be competent in the economics of developing the site, could not conclude that the *affordable rental* units were uneconomical *prior* to purchasing the subject property, it then calls into question his competency as a developer.

One obvious solution he could have pursued was to revert to the original zoning requirement for a maximum of no more than ten single-family homes. However, he recklessly rejected this solution to his dilemma and has proceeded to configure the land and install the infrastructure for the construction of 33 units. Having done so, he now appeals to the County agencies to save him from his folly. To do so would richly reward him for his conscious effort to pervert public policy.

I do not believe that either MNCPPC or the present County Council should allow a developer to deliberately, with malice aforethought, profit from this devious scheme to pervert the law intended to help the most neediest of us.

With respect to the flawed technical analysis I cited above, the issue at hand is the total misuse of a limited amount of data related to the number of trips that would be generated by the residents of the 33 units in the complex. I call your attention to Pages 464 and 465 of the 6<sup>th</sup> Edition, Volume 1 of 3, Item 253, Elderly Housing. Both pages present plots of Average Vehicle Trip Ends versus Occupied Dwelling Units, the first for one hour between 7 and 9 a.m. and the next for one hour between 4 and 6 p.m.

The first item that should attract your attention is the caution that the data should be used carefully due to the small sample size. That caution is an extreme example of an understatement.

In point of fact, the processing of this limited amount of data is totally flawed from both a consideration of the mathematics of statistics as well as an insult to common sense. On Page 464 cited above, the authors ignore the principles of the statistical analysis of data by forcing a linear fit that in no way honestly represents the actual data. This so-called statistical analysis was falsely manipulated to indicate that a larger number of elderly dwelling units resulted in a larger number of vehicle trips. In fact, the limited amount of data shows the *exact opposite!*

The best linear fit would draw a line from the two data points representing about 65 dwelling units *down* towards the three data points representing about 150, 195 and 300 dwelling units. One does not have to have a doctorate in statistical analysis to see this simple, straightforward fit. A correctly performed regression analysis done in this manner would indicate about 21 average vehicle trip ends or a rate of 0.64. This is a far cry from the assumed rate of 0.07 and also far higher than the maximum quoted rate of 0.31.

What can one conclude from the preceding discussion? The answer is that the limited data presented does not allow one to conclude that a rate of 0.07 is appropriate in that sites lower than 65 dwelling units were not included in this "study." A rational approach in this case would be to at least assume that the appropriate rate should *NOT IN ANY CASE*, be lower than that found for the smallest complexes of about 65 dwelling units. This would then require a rate of 0.31 be used in any evaluation of the subject property.

While one may feel confident in using an approach nominally blessed by the Institute of Transportation Engineers, I believe the caution cited above tells one that the authors of this analysis lacked confidence in their approach, as well they should!

If one were to think of the location of small dwelling complexes as opposed to those of large dwelling complexes, the latter would tend to be concentrated in relatively large suburban sites that would economically justify the installation and/or existence of nearby stores and other such facilities. These nearby facilities would obviate the need for extensive driving by the elderly. This is best illustrated by the high-rise Sunrise Community in Montgomery Village.

On the other hand, placing a small community of 33 dwelling units in a relatively remote area on an old, unsafe country road such as Wightman Road that is not served by Ride-On and that is not safe to walk on, will certainly require more vehicle trips than a large complex for even the simplest necessities. As discussed above, I believe that even the limited amount of data presented in the two pages cited, bears out this simple, common sense understanding of the data.

Sincerely,

M. David Lynch

**Maskal, Nellie**

---

**From:** maurice lynch [madsatlynch@msn.com]  
**Sent:** Friday, August 29, 2003 2:10 PM  
**To:** Maskal, Nellie  
**Cc:** Council3; Council4; Council5; Council6; Council7; Council8; Councilmember1; Councilmember2; Councilmember9  
**Subject:** Pending Major Modification to a Special Exception

Nellie Maskal:

After our telephone conversation this afternoon, I realized that I failed to emphasize that I typed in the phrase "affordable rental" housing in red italics in my attachment titled "Koch01." I emphasized this phrase in that Mr. Koch made a significant point before the Board of Appeals that the development was intended as "affordable rental units."

Further, the new developer is now stating as the basis for his major modification, that "affordable rental units" are not viable at the subject site. I neither coined this phrase nor did I use it casually.

My point is still the same. Namely, that our community, the GGCA, will now be forced to deal with 33 owners and the associated condominium board. My personal experience with condo boards is that they are slow acting, often irrational and very often reluctant to authorize required improvements if that will increase the condo fees or impose a special assessment.

I believe this fact completely changes the character of the development as regards our community's ability to serve as a watchdog on compliance with the conditions imposed by the Board of Appeals. This negates one of the more important considerations of the Board in granting the Special Exception.

Repeating myself, the "technical analysis" mindlessly used by the MNCPPC as regards the number of vehicle trips per dwelling unit calls into question, the objectivity of the work done by MNCPPC. This flaw can be readily fixed by redoing the traffic analysis in a proper manner.

**Maskal, Nellie**

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**From:** Buyer, Janet L. [JBuyer@cpsc.gov]  
**Sent:** Thursday, September 04, 2003 9:57 AM  
**To:** Maskal, Nellie  
**Subject:** Modification to Special Exception for Senior Housing on Wightman Road

Hi Nellie,

My position on the application to modify the special exception for the senior/handicapped housing project that is going in on Wightman Road is that the units should remain as rentals rather than be allowed to be sold as condominiums. My reason is that I believe these units will likely be maintained better if they are owned by one corporation with a property manager than by individual senior and handicapped homeowners. I think a rental property manager would be more diligent in keeping the outside of the units as nice looking as possible since they will have to worry about how the whole place looks when they have even only one vacancy. As for condos, lots of homeowners don't really care how their place looks until they go to sell it. Relying on a homeowner's association to enforce covenants that may stipulate outside maintenance doesn't seem to me to make a difference. And if all the residents are seniors and handicapped, I would imagine that they really don't want to be bothered with maintenance issues and would rather have someone else take care of it. If it is decided that the units are converted to condominiums, I ask that a contingency be put on the approval that the outside maintenance of the condominiums must be managed by a property manager or some entity that will be responsible for upkeep on a continual basis. If such a contingency would be included, then as far as I am concerned, the issue of condos vs. rentals is moot to me.

Sincerely,  
Janet Buyer  
20724 Bell Bluff Road  
Gaithersburg, MD 20879  
301-519-0313

9/4/2003

**Maskal, Nellie**

---

**From:** Mary Jane [maryjanego@hotmail.com]  
**Sent:** Thursday, September 04, 2003 1:20 PM  
**To:** Maskal, Nellie  
**Subject:** Units on Wightman Road...

September 3, 2003

Dear Ms Maskal:

My husband and I feel strongly that the units on Wightman Road which are the subject of a hearing On September 11, 2003, should be condominiums. Our reasoning is very simple: people take much better care of places they own. And having places taken better care of benefits everyone, not just those who live there. Given that the occupants will include senior citizens and handicapped people, and since these units will be there for many years, the long term prospect of condos will serve the occupants and the community better if the units are owned rather than rented.

Thank you for your consideration.

Sincerely,  
Mary Jane Goodrick and Craig Smith

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Use custom emotions -- try MSN Messenger 6.0!



## Montgomery County Zoning Ordinance

### Sec. 59-G-1.2. Conditions for granting.

#### 59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

*The use is so allowed under Section 59-C-1.31 of the Zoning Ordinance.*

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

*As noted below, the use is in compliance with these standards and requirements.*

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with an recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

*The 1985 Gaithersburg Vicinity Master Plan supports the R-200 Zone for the subject property. Housing and related facilities for elderly or handicapped persons are allowed by special exception in that zone. A County-wide objective of the Master Plan is to increase the County's total housing stock. The proposed use is consistent with this intention of the Master Plan.*

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

*The use will be in harmony with the character of the neighborhood considering these criteria. As seen from the surrounding neighborhood the development will be viewed as a small enclave of 10 residential buildings. The building design and arrangement will be configured in a way that suggests a large single family dwelling or villa. Building setbacks from the surrounding roads are generally 40 to 45 feet and the proposed landscape plan establishes good compatibility with the roads. The traffic impact will be less than what would have been generated by the previously approved subdivision for 10 single family homes. There are no similar uses in the neighborhood.*

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

*The use will not have a detrimental effect on surrounding properties or the general neighborhood irrespective of any adverse effects the use might have if established elsewhere in the zone. The landscape plan establishes good compatibility along the roads. Lighting is designed to provide safety and a sense of security for the residents while not impacting surrounding properties.*

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

*The use will not create objectionable noise, vibrations, or any other adverse effects, irrespective of any adverse effects the use might have elsewhere in the zone.*

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

*When considering the number, intensity or scope of special exception uses in the surrounding neighborhood will not adversely affect the Prathertown community, Goshen Estates Subdivision or Montgomery Village. As shown on the attached zoning map, one special exception has been approved in the neighborhood on a lot adjoining the subject property. The special exception (S-1124) was approved in 1985 for an accessory apartment.*

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective on any adverse effects the use might have if established elsewhere in the zone.

*The use will not have such an effect on the area or its residents.*

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

*The adequacy of public facilities will be determined by the Planning Board at the time of subdivision review.*

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

**Sec. 59-G-2.35. Housing and related facilities for elderly or handicapped persons.**

A special exception may be granted for housing and related facilities for elderly or handicapped persons, subject to the following provisions:

(a) Prerequisites for granting:

- (1) A minimum of 10 percent of the dwelling units is permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs in accord with Executive regulations. Income levels are defined as follows:

*The special exception satisfies the 30% requirement by providing eight MPDU's. These units will provide a valuable contribution to the senior housing supply.*

- (A) "MPDU income" is the income limit determined by the Department of Housing and Community Affairs in the administration of the moderately priced dwelling unit (MPDU) program, as prescribed by chapter 25A.
- (B) "Low income" is income at or below 60 percent of the area median income adjusted for household size.
- (C) "Very low income" is income at or below 50 percent of the area median income adjusted for household size.
- (D) "Area median income" is as determined annually by the U.S. Department of Housing and Urban Development.

- (2) Taking into account the size of the units, the services to be provided, the income levels to be served, and the location of the site, there is a need for such use because:

- (A) There is an insufficient amount of such housing and facilities to serve the existing population of the County, and

*While the County is approaching an oversupply of housing for frail older elderly (typically those over 75 years of age) there remains a need in the immediate planning area and County-wide for all residents aged 65 and older. This independent living facility can be expected to attract both the more typical resident of age restricted housing who is 75 or older and some of those, 5 to 10 years younger, who are drawn to this housing type as they move to be near adult children or live alone for the first time in many decades. The relatively small number of units in this project will have slight impact on the County's elderly housing supply.*

- (B) The need for such housing and facilities cannot be met by development in accordance with development standards not requiring a special exception.

*The target population for the villa style units proposed by the special exception is independent seniors. While many older citizens prefer high-rise units for security and convenience, others strongly prefer low-rise villa style housing. They like its accessibility, easy egress in an emergency, and suburban style feel. Staff is in agreement with the applicant that such units are in short supply in the County and have substantial waiting lists.*

In making this finding, the Board must consider demographic data, including projections and analyses provided by the Planning Board and county government, as well as evidence provided by parties to the case. Such data will be evaluated by the technical staff of the Planning Board.

- (3) The proposed use will not produce adverse effects on the use or development of the surrounding area because of noise, traffic, type of physical activity or any other reason.

*The use will not produce adverse effects on the use or development of the surrounding area because of noise, traffic, or type of physical activity or any other reason. The design and arrangement of the 10 residential buildings will be in a way that suggests large single family dwellings or villas. Building setbacks and the proposed landscape plan will ensure good compatibility with the roads and surrounding properties. The traffic impact will be less than what would have been generated by the previously approved subdivision for 10 single family homes.*

- (4) The site or the proposed facility has adequate accessibility to public transportation, medical services, shopping areas, recreational and other community services frequently desired by elderly or handicapped persons.

*The site is reasonably convenient to shopping and other goods and services. The applicant will petition to have a bus stop located within the development. Presently, there are no bus stops in the immediate area. The proposed Montgomery Village Local Park will be located northeast of the property on Wightman Road.*

- (5) The site or the proposed facility is reasonably well protected from excessive noise, air pollution and other harmful physical influences.

*The site and the proposed facilities will be reasonably well protected from excessive noise, air pollution and other harmful influences.*

- (b) Occupancy of a dwelling unit is restricted to the following:

- (1) An elderly or handicapped person, as defined in section 59-A-2.1;
- (2) The spouse of an elderly or handicapped resident, regardless of age or handicap;
- (3) A resident care-giver, if needed to assist an elderly or handicapped resident; or

- (4) In a development designed primarily for handicapped rather than elderly persons, the parent, daughter, son, sister or brother of a handicapped resident, regardless of age or handicap.

Additional occupancy provisions are:

- (5) Age restrictions must comply with at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, and subsequent amendments thereto. (In that Act, "familial status" refers to discrimination against families with children.)
- (6) Resident staff necessary for operation of the facility are also allowed to live on site.

(c) Development standards, other than density, in residential zones where allowed by special exception, except R-30, R-20, R-10 and R-H:

- (1) Minimum net lot area: 1 ½ acres, but not less than the minimum net lot area specified by the relevant zone.

*The net lot area will be 5.79 acres. The minimum lot area required for the R-200 Zone is 20,000 square feet.*

- (2) Minimum setbacks:

- (A) From street: 50 feet. Except for an access driveway, this must be maintained as green area. However, if development does not exceed the height limit of the applicable one-family zone, the minimum setback specified in the zone applies.

*The development does not exceed the height limit of the R-200 Zone, as such, the minimum setback of 40 feet applies. The proposed buildings satisfy this setback.*

- (B) From side and rear lot lines: 25 feet or as specified by the relevant zone, whichever is greater.

*The setback requirement from side and rear lot lines is 25 feet which is greater than what is required by the zone. A minimum setback of 32 feet is provided.*

- (3) Maximum building height: 120 feet, provided the following height-to-setback ratio is achieved for heights above the maximum prescribed by the applicable zone:

- (A) Rural Cluster, Rural, RE-2, RE-2C, RE-1, R-200, R-150 zones: One foot of height is allowed for each one foot of setback from the side and rear lot lines, up to a height of 50 feet. Between 50 and 120 feet of height, one additional foot of height is allowed for each additional 2 feet of setback beyond the minimum side and rear yard setbacks prescribed by paragraph (2)(b), above.

*The proposed buildings will have a building height of approximately 30 feet.*

- (B) R-90, R-60, R-40, RT-12.5, RT-8, RT-6 zones: 35 feet, except that, between 35 and 120 feet of height, one additional foot of height is allowed for each additional 2 feet of setback beyond the minimum side and rear yard setbacks prescribed by paragraph (2)(B), above.

*Not applicable.*

- (C) The Board may approve a reduction in the setback requirement of paragraph (3)(A) or (B) from a property line that abuts existing development constructed to a height of at least 50 feet or if the property possesses severe topography or other natural features that would permanently screen the building from neighboring one-family dwellings.

*Not applicable.*

- (4) Maximum lot coverage: As specified by the relevant zone, provided the coverage complies with the setback requirements of paragraphs (c)(2) and (3) of this section.

*The total building coverage will be 11% which is less than the 25% allowed by the zone.*

- (d) Development standards, other than density, in the R-30, R-20, R-10 and R-H zones are as specified by the relevant zone in section 59-C-2.41, except that lot coverage and building setbacks may be modified as specified in section 59-C-2.42 concerning standards for moderately priced dwelling units.

*Not applicable.*

- (e) Maximum density:

- (1) In the Rural, Rural Cluster, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-40, RT-6, RT-8, RT-10, and RT-12.5 zones, the number of units is governed by the overall size of the building as determined in accordance with the combined height and setback standards specified by paragraphs (c)(2) and (3) of this section. Minimum unit size is governed by the minimum space and other relevant standards of chapter 26, title "Housing Standards," of this Code, as amended.

*The use is in conformance with this maximum density requirement.*

- (2) In the R-30, R-20, R-10 and R-H zones, the number of dwelling units permitted by the density specified for the zone by section 59-C-2.41, title "Standard Method of Development," may be increased by 1 ½ units for each unit reserved for a household of MPDU, low or very low income, as defined in paragraph (a)(1) of this section.

*Not applicable.*

- (f) Parking and loading:

- (1) Parking must be provided in accordance with the provisions of section 59-E-3.7, title, "Schedule of Requirements." The Board of Appeals must require adequate scheduling and long-term continuation of any services for which parking credits are

granted in accordance with section 59-E- 3.33(b) and may require additional parking for any facilities and services provided in accordance with paragraph (g)(2) of this section, if they serve nonresident elderly or handicapped persons. When considering the need for additional parking the Board may consider the availability of nearby public or private parking facilities.

*Parking will be provided in accordance with the requirements found in Section 59-E-3.7. As shown on the site plan, a total of 58 spaces are proposed, exceeding the minimum requirement by six spaces.*

- (2) Loading areas to serve any facilities, such as kitchens or retail stores, requiring truck deliveries must be screened so as not to be visible from any lot line abutting or confronting land in a one-family residential zone.

*There are no facilities, such as kitchens or retail stores, which require designated loading areas. The proposed landscape plan establishes compatibility along the roads and with abutting and confronting residential land. Within the project extensive plantings will be provided around the buildings, driveways and cul-de-sac. This landscaping will mitigate the view of truck deliveries and trash collection.*

(g) Additional provisions:

- (1) One or more of the following ancillary facilities and services may be included to serve the residents and possible nonresident elderly or handicapped persons. The Board may restrict the availability of such services to nonresidents and specify the manner in which this is publicized.
- (A) Provision for on-site meal service;
  - (B) Medical or therapy facilities or space for mobile medical or therapy services;
  - (C) Nursing care;
  - (D) Personal care services;
  - (E) Day care for elderly or handicapped persons;
  - (F) On-site facilities for recreation, hobbies or similar activities; or
  - (G) Transportation to such off-site facilities and services as shopping, religious, community or recreational facilities, or medical services.

*A reception hall will be provided as a place to socialize with neighbors or visitors or participate in a variety of activities.*

- (2) Retail facilities may be included to serve exclusively the residents of the building.

*No retail facilities are proposed.*

- (3) The application must contain a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical, and public services within a one mile radius of the proposed facility.

*A vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical, and public services within a one mile radius of the proposed facility has been submitted with the application.*

- (4) Construction is subject to all applicable federal, state and county licenses or certificates.
- (h) Provisions governing facilities approved prior to March 7, 1990.

- (1) A housing facility for elderly or handicapped persons existing on March 7, 1990 or for which a petition was approved prior to March 7, 1990 is not a nonconforming use, and may be continued in accordance with the terms and conditions of the special exception grant. Modifications may be approved by the Board of Appeals that are in compliance with the special exception standards in effect prior to March 7, 1990, except that modifications affecting height, density, or setbacks must be in compliance with the special exception standards that became effective on March 7, 1990. If damaged, the facility may be rebuilt, repaired and/or reconstructed.

*Not applicable.*

- (2) A housing facility for elderly or handicapped persons existing on March 7, 1990 or for which a petition was approved prior to March 7, 1990, located on property containing at least 85 acres of land, may be extended, enlarged, or modified in accordance with the special exception standards in effect prior to March 7, 1990.

*Not applicable.*