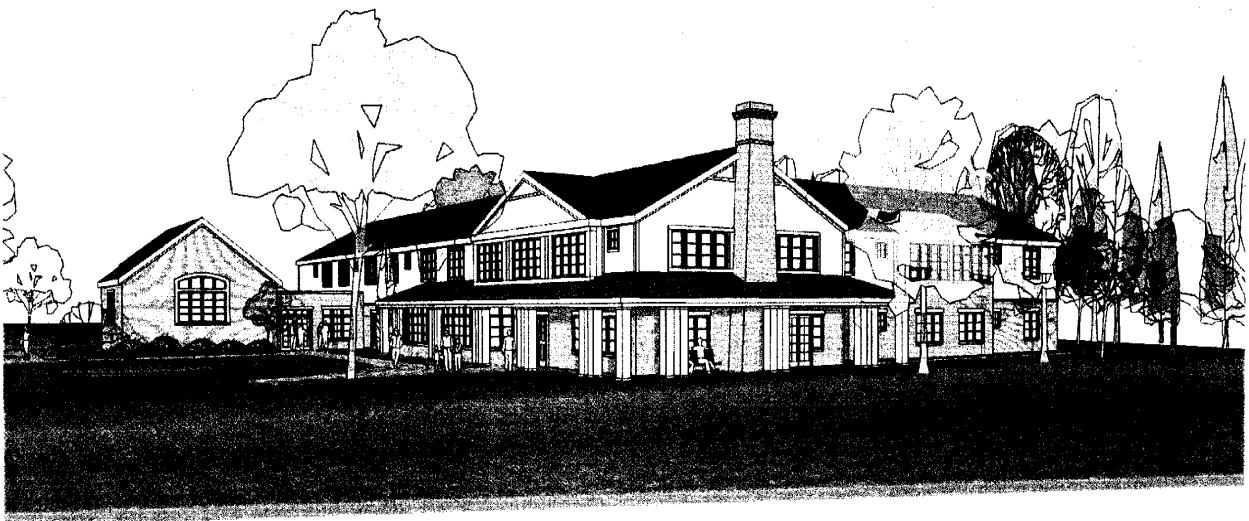


provided details of both types of lighting fixtures as well as a lighting plan. The applicant's lighting plan appears to be in compliance with the requirements of Section 59-E-2.6.

The non-inherent effects concerning the proposed use include the scale and bulk of the building, hours of operation, number of parking spaces, traffic on and around the site and the location and size of the driveways. Based on a maximum of 35 residents, the total number of parking spaces (36) provided are adequate and meet the requirement, and the overall onsite circulation system is well organized. Given the fact that the average age of the residents is 80 years old, the majority of the residents are not expected to drive or own automobiles, therefore, adequate spaces will be available to the residents, staff and visitors.

However, given the nature of the use (Housing and Related Facilities for Senior Adults and Persons with Disabilities) the number of handicapped parking spaces needs to be increased from four to eight to comply with the requirements of **Section 4.1.2 (5)(d)(ii) of the Maryland Accessibility Code**. The site plan must be revised to reflect the required number of handicap parking spaces. Moreover, the applicant must coordinate with the State Highway Administration regarding the proposed access to Seneca Road (MD 112).

The site and landscape plans show a freestanding sign located at the entrance to the property, approximately 11 feet behind the ultimate-right-of-way line. No information is provided regarding the type, area and height of the sign. All signs placed on the property shall meet the requirements of Section 59-F-4.2 (a) in terms of number, location and area.



The proposed 11,281 square feet of facility and its placement on the 8.17-acre property would not have a detrimental impact on the use or/and development of adjacent properties or the neighborhood. There are extensive barriers, natural and man-made, in the form of topography, forest conservation, easements; landscaping and building setbacks, between the nearest residential properties and the proposed use. Landscaping, consisting of a significant number of plant materials, setbacks in excess of the minimum requirements and orientation of the proposed building on the property, will provide adequate screening and buffering of the proposed use from adjoining residential properties. There are no inherent impacts associated with the subject proposal that warrant denial.

J. Specific Special Exception Requirements: Pursuant to Section 59-G-2.35

A special exception may be granted for housing and related facilities for senior adults or persons with disabilities, subject to the following provisions:

(a) Prerequisites for granting:

(1) A minimum of 15 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:

- (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.**

The applicant's statement of operations indicates the following:

MWOSH's mission is to provide senior Orthodox citizens with an alternative to unnecessary and premature institutionalization. MWOSH seeks to achieve this goal through the establishment of affordable residential assisted living facilities providing an "Orthodox family" environment. A central objective of MWOSH is to provide for the daily living needs of its residents within a unique

Orthodox cultural environment, founded on a family-like setting, with access to Orthodox churches and community cultural events. Although oriented towards a Greek Orthodox clientele, MWOSH is open to others not of the Orthodox faith.

The applicant's statement of operation does not provide a breakdown of the percentage of dwelling units reserved for households of the various income levels. However, in a supplemental statement dated September 7, 2005, the applicant offered the following statement:

The Petitioner has conducted preliminary meetings with the Montgomery County Department of Housing and Community Development to determine how it can satisfy the requirement to provide housing for lower income levels in accordance with the formula contained in the Montgomery County Zoning Ordinance. It is the intention of the Applicant to satisfy the requirement to reserve rooms for persons of MPDU, lower or very low incomes. However, the exact percentages of reserved units has not yet been determined but will be worked out and will be the subject of an agreement to be reached with the Department of Housing and Community Affairs prior to initiation of the project.

The applicant shall provide documentary evidence to the Hearing Examiner to demonstrate compliance with the above listed requirements (A-D).

The housing staff of the Research and Technology Center has offered the following Comments:

- **MPDUs are not required for this site, because the area is not planned to receive public sewer.** Ordinance No. 15-38 (attached) became effective on April 1, 2005 and amended 59-C-1.329 to require MPDUs in the RE-2 zone only where "that development is served by public sewer service and where designated for sewer service in the applicable master plan." Housing staff verified that the site of the proposed Alpha House is not planned for public sewer through (1) review of the County's Comprehensive Water Supply and Sewerage Plan, (2) review of the 2002 Potomac Subregion Master Plan, and (3) conversation with Community-Based Planner Callum Murray. Mr. Murray confirmed that the master plan proposes no public sewer for the subject site or its surrounds.
- **Assisted living, especially "affordable" assisted living, is in demand. The trend for seniors is to age-in-place and to move when they need assistance. Both the *Need***

*for Housing for Older Adults in Montgomery County (M-NCPPC, April 2001) and the 55+ Housing Preference Survey (2005) indicate that Montgomery County's independent seniors choose to stay in their own homes as long as possible and that they tend to move when they need assistance. In addition, the *Need for Housing for Older Adults* reported that affordable assisted living units would be needed for years to come.*

- **The applicant's proposal will require the construction of a significant portion of affordable units.** According to the applicant's representative, Jody Kline (Sept. 7, 2005) the number of affordable units will meet the requirements of the ordinance, which stipulates between 15 and 30 percent of the total be affordable, depending upon the income levels served (See 59-G-2.35(a)(1)A through D).
 - The housing staff recommends that the applicant provide 35 units of assisted living units for seniors, of which between 15 and 30 percent will meet the affordability requirements of 59-G-2.35 (a)(1) A through D.
- (2) The site or the proposed facility has adequate accessibility to or provides on site public transportation, medical service, shopping areas, recreational and other community services frequently desired by senior adults or persons with disabilities.**

According to The Ride Guide (Washington Metropolitan Area Transit Authority's (WMATA) transit information Web site), the area is served by Ride On Bus 76 towards Poolsville and towards Shady Grove Metro Station. The closest bus stop is near the intersection of Darnestown and Seneca Roads, approximately 400 feet from the subject site. The applicant's statement of operation indicates that MWOSH proposes to own or contract for a van service to serve the residents' needs for seniors' group activities or shopping trips. In addition, the facility's staff will assist with arranging transportation for medical appointments.

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

Due to the existing pattern of development in the area, which is characterized by low-density, rural type, residential developments and institutional uses, with a small commercial enclave (north), the subject property is not likely to be susceptible to air pollution and other harmful physical influences. Given the placement of the building on the property relative to adjoining properties, and considering the current traffic pattern

on the adjacent street, potential visual and noise intrusion to the proposed site would be minimal.

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

- (1) A senior adult or person with disabilities, as defined in Section 59-A-2.1;**
- (2) The spouse of a senior or disabled resident, regardless of age or disability;**
- (3) A resident care-giver, if needed to assist a senior or disabled resident; or**
- (4) In a development designed primarily for persons with disabilities rather than senior adults, the parent, daughter, son, sister or brother of a handicapped resident, regardless of age or disability.**

The applicant has indicated that occupancy of a unit in Alpha House will be restricted to the persons who are described in §59-G-2.35 (b)(1)-(4) of the Montgomery County Zoning Ordinance.

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.)**

The applicant has not provided information regarding compliance with this requirement. At the time of the Planning Board Hearing, the applicant must submit to the record of this case documentary evidence or a letter of confirmation from DHCA, indicating that the proposed facility qualifies for exemption.

- (6) Resident staff necessary for operation of the facility are also allowed to live on site.**

The applicant statement indicates that the proposed facility will be operated around the clock with staff working in three shifts with the following shift schedule:

Day Shift: 7.00 A.M. – 3.30 P.M.

Evening Shift 3:00 P.M. – 11:30 P.M.
Night Shift 11:00 P.M – 7:30 A.M.

Given the presence of staff in the facility on a 24-hour basis, there will not be need for staff to live on site.

(c) Development standards, other than density, in residential zones where allowed by special exception:

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

The proposal meets or exceeds the minimum setback requirements for all yards. Therefore, it is in compliance with the requirements.

(2) Maximum building height: four stories or the height of the applicable zone, whichever is less. Additional height up to six stories is permitted if the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions.

The proposed building will have a maximum height of 25.5 feet (two-stories), well below the maximum allowed (50 feet).

(3) Maximum lot coverage: As specified by the relevant zone.

With 3.1 percent (11,200 Square feet) lot coverage, the proposal is in compliance with this requirement.

(4) Minimum green area:

- (A) R-60, R-90, and the RT Zones: 50 percent**
- (B) R-150 and R-200 Zones: 60 percent**
- (C) RE-1, RE-2, and RE-2C Zone: 70 percent, except where the minimum green area requirement is established in an approved and adopted master plan.**

The Board may reduce the green area requirement by up to 15% if it is necessary to accommodate a lower building height for compatibility reasons.

The proposal is in compliance with this requirement. A green area of 88 percent (373,800 square feet), exceeding the minimum requirement of 70 percent, is provided. A waiver is not necessary in this case.

- (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 the 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. The property is in the RE-2 Zone.

- (e) Maximum density:**

In the Rural, Rural Cluster, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-60, 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 development standards by Paragraph (c) 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 development standards of the zoning regulations for the RE-2 Zone do not specify the minimum requirement for number of units in a senior housing facility. However, Section 26-5 (a) of the Housing and Building Maintenance Standards specifies the following.

- (a) Floor area, dwelling unit. Every dwelling unit must contain at least 150 square feet of floor area for the first occupant and at least 100 additional square feet of floor area for every additional occupant. The floor area of that part of any room where the ceiling height is less than 5 feet or where the room width is less than 7 feet must not be considered in computing the habitable space of the room to decide its maximum permissible occupancy.*

All 35 units in the proposed facility exceed the minimum 150 square feet of area. The sizes of the one-room units range from 165 square feet to 262.5 square feet of floor area. The facility contains one two-room suite with a total area of 619.46 Square feet.

- (f) Parking and loading:**

Parking must be provided in accordance with the provisions of Section 59-E-3.7 and Section E-2.83. The Board 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 senior adults or persons with disabilities. When considering the need for additional parking, the Board may consider the availability of nearby public or private parking facilities.

The proposed senior living facility will have 35 living units. A total of 35 parking spaces are required (1Space/unit). According to the parking schedule and drawing on the proposed site plan, a total of 36 parking spaces, including four handicap parking spaces and one bus space are provided.

Section 4.1.2 (5)(d)(ii) of the Maryland Accessibility Code requires for facilities such as the proposed housing for senior adults and persons with disabilities, twenty percent of the total number of spaces on site shall be designed for the physically handicapped. Within that 20 percent, 1 out of every 4 parking spaces must be designed as a van-accessible space. As such, 8 handicap parking spaces of which 2 are van accessible are required for the proposed facility. The proposal provides only 4 handicap spaces and 2 of which are van accessible. The site plan must be revised to reflect the required number of handicap parking spaces.

(g) Additional provisions:

- (1) One or more of the following ancillary facilities and services may be included to serve the residents and possibly nonresident senior adults or persons with disabilities. 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 senior adults or persons with disabilities;**
 - (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.

In a supplemental statement dated September 7, 2005, the applicant has stated that many of the ancillary facilities and services described in §59-G-2.35 will be provided for residents of Alpha House including on-site meal services, game and activity rooms, transportation to off-site locations and periodic visits by specialists providing education, entertainment or personal enrichment opportunities for residents.

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

The applicant did not provide the above referenced information as part of the application. Staff recommends that the information contained in this requirement shall be submitted into the record of this case at the time of the Planning Board hearing.

As noted, WMATA's transit information web site indicates that the area is served by Ride-On Bus 76 towards Poolsville and towards Shady Grove Metro Station. The closest bus stop is near the intersection of Darnestown and Seneca Roads approximately 400 feet from the subject site.

- (4) Construction is subject to all applicable Federal, State and County licenses or certificates.**

The proposal is subject to a subdivision review and building permit process. Moreover, the project is subject to the review and certification process of the Housing Opportunity Commission and the Department of Housing and Community Affairs for the financing of the project, mix of units (for various income level) and other applicable requirements.

- (h) Provisions governing facilities approved prior to March 7, 1990:**

Not applicable.



WEST ELEVATION



SOUTH ELEVATION



NORTH ELEVATION



EAST ELEVATION

K. General Conditions: Section 59-G-1.21.

(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 subject property is located in the RE-2 Zone which permits the proposed special exception use.

(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.

With the proposed conditions the proposal is in compliance with the specific special exception requirements of Section 59.G-2.35 for housing and related facilities for senior adults or persons with disabilities.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a 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 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.

There are no major Master Plan concerns that are associated with this application. As noted, the 2002 Potomac Subregion Master Plan does not have any specific guidance regarding housing and related facilities for senior adults or persons with disabilities. The Community Based Planning Division has offered the following comments.

"...Specific Master Plan recommendations intended to create a cohesive, pedestrian friendly, rural center for the Darnestown community included the following:

- Allow residential properties adjacent to commercial properties to be used for septic fields (to serve the

commercial properties) where recommended by the Master Plan.

- Apply the RE-2 / Country Inn Zone to 11 acres on the east side of Seneca Road including parcels 708, 655 (the subject parcels) and parcel 641.

"The Master Plan also recommends that a Class II bikeway (bike lane) be constructed along Seneca Road from Darnestown Road to River Road. Seneca Road already provides scenic and rural recreational rides for many on-road cyclists and is mentioned in several different cycling guides for the area.

"The subject property has an existing special exception (S-2484) approved on April 8, 2002 for an assisted living group home for sixteen residents. The site development plan that accompanied that application left room at the northern end of the MWOSH site for parking or excess septic capacity for a future restaurant/tavern or country inn on the adjacent property (Parcel 641) to the north. To fulfill the objectives of the Potomac Subregion Master Plan, it is essential that the current petition do likewise.

"...Community-Based Planning staff finds the site development plan to be in conformance with the Potomac Subregion Master Plan. Staff recommends that the applicant provide a sidewalk to accord with the Master Plan goal of a pedestrian friendly rural village. Although the Master Plan recommends a Class II bikeway on Seneca Road, facility planning by the State Highway Administration has not yet been programmed and provision of a sidewalk linking the proposed senior housing with the village center is considered preferable to a fragment of a bike lane."

Staff is in agreement with the community based planning findings and recommendations.

- (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.**

With the recommended conditions the proposed use will be in harmony with the general character of the neighborhood. The site and landscape plans provide for the proportional integration of a modestly sized building and supporting structures into an ample site with extensive landscaping, innovative site design, adequate setbacks, substantial green space (88 percent), and sufficient building setbacks.

Due to the nature of the use, it is unlikely that the proposed building would generate a level of traffic or noise that would raise concern for congestion on the streets

- (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.**

Given its location, the proposed use can be viewed as a transition between the low-density residential neighborhood to the south and east and the adjoining relatively suburban area to the north and northwest that is within the Rural Village Center Overlay Zone.

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

It is unlikely that the use would cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. The play area and the building itself are adequately set back from the adjoining properties and the adjacent road. Sufficient screening is provided in the form of landscaping and fences. Off street parking and the internal circulation pattern are designed to provide adequate on-site parking accommodation for residents, staff and visitors and orderly circulation in a manner that would not result in a traffic spill over onto the adjacent road. Interior lay out of the facility is designed in accordance with the licensing agency's requirements. The applicant has submitted a floor plan into the record of this application.

- (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.**

Staff has identified at least 7 special exception uses within the neighborhood boundary (as defined by Staff). Some of these uses (BAS-417 and SE-611, both home occupations for lawn mower repair) date back to the 1970's and may or may not exist currently. Other uses include BAS- 773 (revoked in 1988), BAS-2572 (wireless telecommunications facility), approved in 2003, BAS-2186 (Farm Market), approved in 1995 and S-2484, an assisted living group home for sixteen residents on the subject site, approved in 2002.

In light of the number and nature of these uses, it is unlikely that the proposed special exceptions would 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. There has not been a substantial change in the area, in terms of development, since the approval of Special exception S-2484 in 2002. As was determined in the approval of S-2484, it is also true that in the case of the subject special exception request, the proposed use would be a good buffer between the existing commercial uses to the north and the predominantly residential area south of the subject area.

In view of the fact that the proposed development is replacing the development that was approved previously in 2002 (S-2484), staff recommends that prior to the public hearing of this case by the Hearing Examiner, the applicant shall petition the Board of Appeals to revoke S-2484, in conjunction with the approval of S-2648, stating that the owner does not intend to develop the property in accordance with that special exception.

- (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 of any adverse effects the use might have if established elsewhere in the zone.**

With the recommended conditions, the proposed use will not adversely affect the health, safety, security, morals or welfare of residents, visitors or workers in the area.

- (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. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.**
- (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 not reduce the safety of vehicular or pedestrian traffic.**

The proposed special exception is subject to approval of a preliminary plan of subdivision.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department, which approves or licenses the project.**

The applicant shall so note.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.**

The applicant shall so note.

Conclusion

Based on the foregoing analysis, staff recommends approval of Approval of Special Exception S-2648 and Preliminary Forest Conservation Plan, subject to the conditions found at the beginning of the technical staff report.