



March 6, 2024

**Comment submitted during open record on Public Hearing:  
Independent Living Senior Housing Complex in the Watershed  
Conservation District (ZTA 22-173)**

The proposed Zoning Text Amendment (ZTA) would define a new land use entitled "Independent Living Senior Housing Complex" and would substantially change the allowable provisions of the Watershed Conservation District (WCD). The applicant crafted this amendment specifically to allow this new use on a 20-acre parcel owned by the applicant known locally as St. Mary's Star of the Sea (Map 0012, Parcel 0129, I.D. 09-07-040385), a name that is included in the SDAT legal description of the property. It is located within the WCD at 6495 Indian Head Highway, Indian Head and abuts a conservation easement held by the Conservancy for Charles County on 208 acres of county-owned land locally called Pomonkey Forest. Much of the common boundary with the Pomonkey Forest easement is one of the headwaters of a blue-line stream that has a relatively short downhill run to Mattawoman Creek near the tidal limit. The Conservancy has grave concerns that if this ZTA is approved and the Independent Living Senior Housing Complex is built on this site, it will negatively affect the conservation values of the adjacent Pomonkey Forest easement. The Pomonkey Forest easement provides habitat for Rare, Threatened, and Endangered Species. A plant that is state-listed as Endangered is documented to occur on the easement,

In addition to creating this new land use, the proposed ZTA would drastically increase both the allowable residential density and the limits to impervious surface for this land use in the WCD that far exceed those limits codified in the WCD at the direction of the Comprehensive Plan.

**Requirements for ZTA approval**

The county zoning ordinance requires the applicant for a text amendment to provide the specific reasons why such a text amendment is necessary and should be approved by the County Commissioners.

In response to this requirement, the applicant asserts that there is a dire need for a new use in the WCD, Independent Living Senior Housing Complex, to assist in the creation of affordable housing for seniors in the county. In the Statement of Justification, the applicant specifically highlights their above-described property as the future site of an Independent Living Senior Housing Complex.

### **Change/Mistake**

The applicant failed to provide evidence that it was a *mistake* that the Comprehensive Plan required the creation of the new land use category, Watershed Conservation District (WCD) with the development constraints imposed on that zone. Nor has the applicant demonstrated that there has been a *substantial change* in the WCD zone or surrounding neighborhood that shows the amendment is *necessary*. Neither the amount of time the applicant has worked to develop this text amendment nor strong community support for the proposed senior housing complex justifies changing the purpose and provisions of the WCD.

### **Consistency with the Comprehensive Plan**

Maryland law requires consistency between zoning/local land use regulations and the Comprehensive Plan.

The 2016 Comprehensive Plan called for the creation of the WCD with a density of one dwelling unit per twenty acres (1:20) to recognize the importance of protecting the Mattawoman Stream Valley and Creek with limited impervious coverage and to better align with the Tier Map designation of a Tier IV area.

The most important tools used to protect the sensitive natural areas of the WCD zone are the limits on density and impervious surface coverage. The Purpose of the proposed ZTA is to create a new land use in the WCD that would drastically increase both the density and impervious surface limitations for this use, allowing up to 96 dwelling units on a 3-acre lot on the 20-acre parcel. This increase of intensity and density is contrary to the intent of the WCD and *inconsistent* with one of the most successful elements of the 2016 Comprehensive Plan.

The Planning Commission in their letter of recommendation of approval of the ZTA asserts that *this amendment will further the goals of the Comprehensive Plan by providing housing to a needed segment of the County's population and by encouraging more diversity in the types of available housing.* The lack of affordable housing is a problem nationwide. But for the Planning Commission to use the Comprehensive Plan's aspirational goals for housing diversity as

justification for approval of this ZTA demonstrates a lack of understanding of the real problem with the proposed amendment and the amendment process.

The issue is not whether the creation of the new land use, Independent Living Senior Housing Complex, is consistent with the Comp plan. The issue is whether this new use can be allowed in the WCD given the drastic increase in the density and impervious surface coverage which is in direct conflict with the goals and objectives of the WCD.

The Planning Commission did *not* provide findings of fact or a well-articulated conclusion to determine that the applicant's vision to provide affordable senior housing in the WCD is in accordance with the Charles County Comprehensive Plan and the provisions of the WCD.

### **Spot Zoning**

Spot Zoning is not permitted in Maryland.

According to the Staff report, *"The Applicant specifically highlight their property... as the future site of an Independent Living Senior Housing Complex"* and *"This amendment was specifically crafted to fit their, [the applicant's] property..."* During the Planning Commission's work session, staff warned that the ZTA is crafted so narrowly that it risks being considered "Spot Zoning."

An amendment that creates a special benefit for a limited group of property owners to develop their properties at a density and intensity that the WCD was designed to prevent does suggest this amendment might be considered spot zoning. The fact that many of the public comments in support of this amendment mention the applicant's property as the site for this new use further underscores concern that this could be considered spot zoning.

### **Septic Tier Maps:**

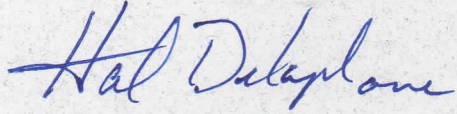
The county's approved Tier Map restricts the total number of units allowed on septic systems to minor subdivisions in Tier IV areas (conservation land uses), up to seven units. Only limited growth on septic systems can occur in Tier IV. The vast majority of the WCD, including the applicant's property is in Tier IV.

An on-site sewage disposal system on a 3-acre lot serving 96 dwelling units is inconsistent with the provisions for land mapped Tier IV.

There is a well-recognized need for more affordable housing options in our county and state. The applicant has spent a lot of time and money crafting this ZTA. However, neither of these facts are justification to approve the ZTA. The inconsistency with the Comprehensive Plan, the

septic tier maps, and the potential that it be adjudicated as spot zoning, are facts that show that the county cannot approve this flawed amendment.

Respectfully,

A handwritten signature in blue ink that reads "Hal Delaplane". The signature is written in a cursive style with a large, stylized "H" and "D".

Hal Delaplane, President