

LAW OFFICES
SHIPLEY & HORNE, P.A.

Russell W. Shipley
Arthur J. Horne, Jr.*
Dennis Whitley, III*
Robert J. Antonetti, Jr.

1101 Mercantile Lane, Suite 240
Largo, Maryland 20774
Telephone: (301) 925-1800
Facsimile: (301) 925-1803
www.shpa.com

Bradley S. Farrar
L. Paul Jackson, II*

* Also admitted in the District of Columbia

April 28, 2023

VIA ELECTRONIC DELIVERY

Ms. Kelly M. Palmer, Planner III
Charles County Government
Department of Planning & Growth Management
200 Baltimore Street, LaPlata, Maryland 20646

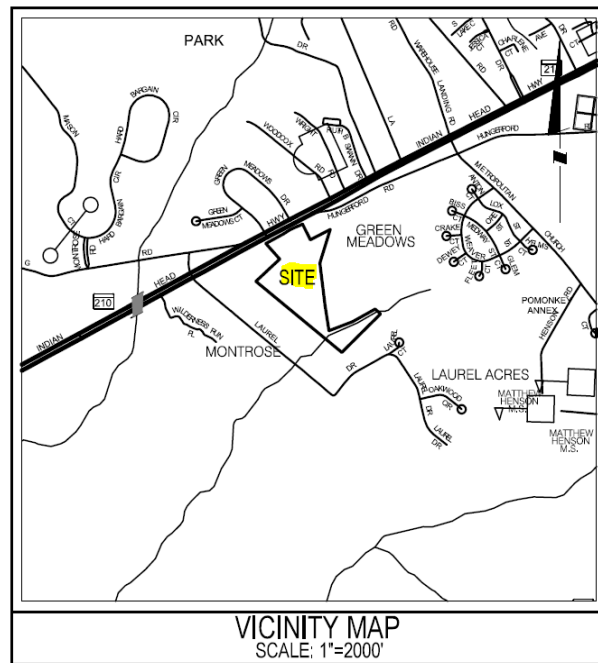
RE: The Master's Child Church - (ZTA 22-173)
Proposed Text Amendment Application for Independent Living Senior
Housing Complex in the WCD (Watershed Conservation District) Zone
REVISED Statement of Justification

Dear Ms. Palmer:

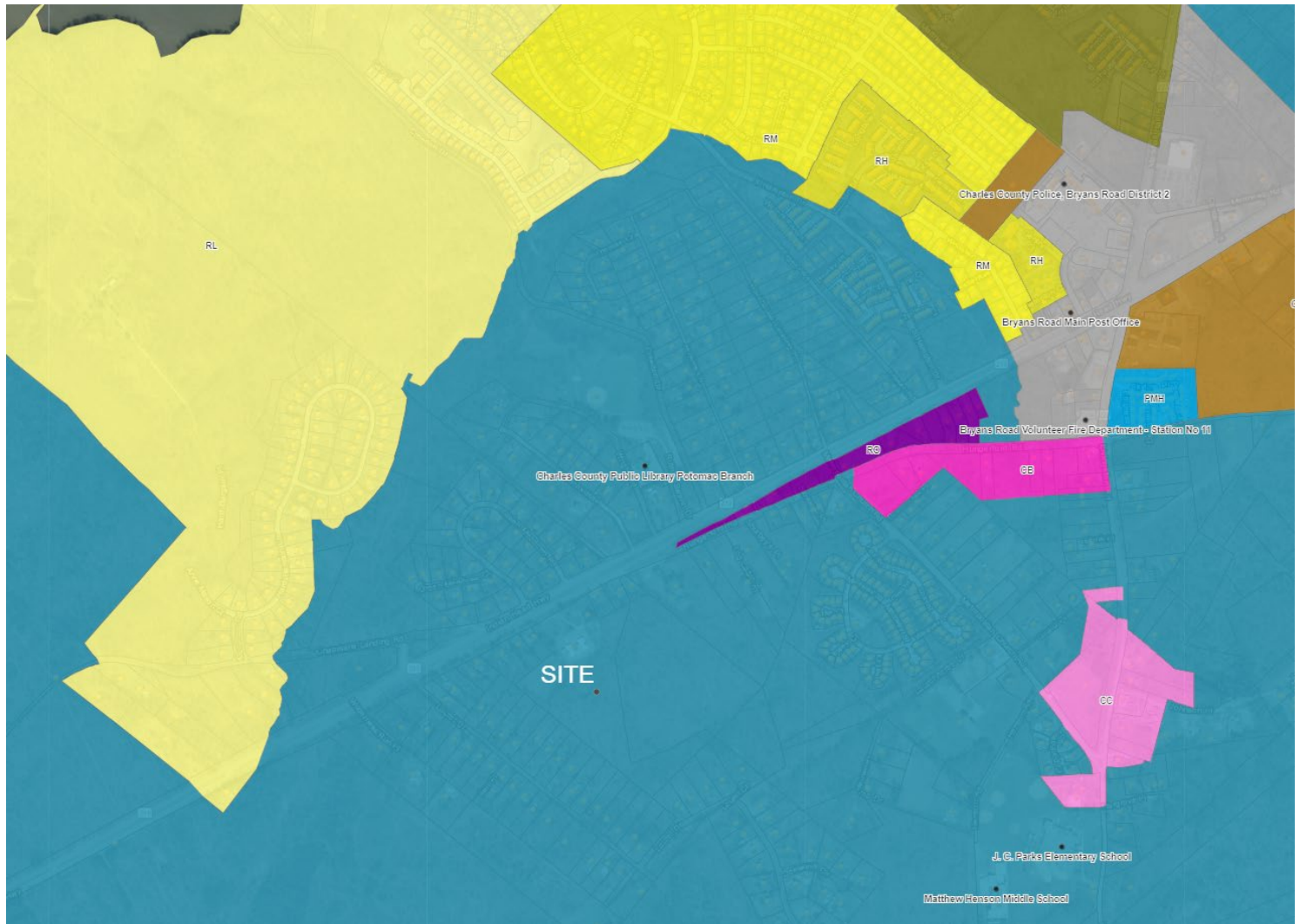
On behalf of our client, The Master's Child Church (the "Applicant"), Dennis Whitley, III, and the Law Office of Shipley and Horne, P.A. submits this statement of justification in support of the proposed text amendment application to allow the use of an Independent Living Senior Housing Complex in the WCD (Watershed Conservation District) Zone under certain circumstances (and subject to specific conditions). Thank you and the other staff members for your review of the prior submitted text amendment application for this use, ZTA #21-165. We offer the following information in support of the current text amendment application:

A. **Location**

Although the subject text amendment is not specific to any one property in the WCD Zone, the Master's Child Church Property consists of 22.24 acres in the WCD Zone. The subject Property is located on Tax Map: 12, Grid D4, and is known as Parcel 129. The Property was formerly the site of the St. Mary's Star of the Sea School & Church and has been used for institutional purposes for over 50 years. The subject Property is located on the south side of Indian Head Highway, south of Hungerford Road, and north of Laurel Drive, and has a premise address of 6485 Indian Head Highway, Indian Head, MD. 20640.



Zoning Map



B. Description of the Proposed Project:

The text amendment being requested is to allow the use of an Independent Living Senior Housing Complex in the WCD Zone under certain circumstances, (and subject to specific conditions). To further clarify the proposed use, the Applicant is proposing that an Independent Living Senior Housing Complex be defined as follows:

INDEPENDENT LIVING SENIOR HOUSING COMPLEX:

A RESIDENTIAL FACILITY PROVIDING AFFORDABLE HOUSING FOR INDIVIDUALS WHO ARE 55 YEARS OF AGE OR OLDER AND WHO ARE ABLE TO LIVE INDEPENDENTLY. ALLOWED BUILDING TYPES INCLUDE SINGLE-FAMILY ATTACHED OR MULTIFAMILY DWELLING UNITS. SUCH INDEPENDENT LIVING FACILITIES SHALL INCLUDE COMMON RECREATION, LIBRARY, MEETING SPACE, AND OFFICE SPACE FOR MEDICAL AND PERSONAL SERVICES. THESE ANCILLARY SERVICES ARE INTENDED TO SERVE SENIORS WHO RESIDE ON THE PREMISES ONLY, AND ARE NOT AVAILABLE TO THE GENERAL PUBLIC UNLESS OTHERWISE PERMITTED WITHIN THE ZONE IN WHICH THE USE IS LOCATED.

RESPONSE: The proposed Independent Living Senior Housing Complex use emphasizes seniors' desire to live, remain and age in their own housing and community for as long as possible while offering onsite tools and programs to facilitate that goal. The Applicant believes that it is appropriate to clearly identify the supporting facilities and/or services within the proposed definition. This is consistent with definitions provided for numerous other uses within Section 297-49(E) of the County Code, including, but not limited to, a Retirement Housing Complex, Hospital, Farm Alcohol Production Facility and Agriculture. The above definition was revised and refined through the 1st and 2nd review cycles of the prior text amendment application, ZTA #21-165, to address comments received from the Planning Staff, and further amended to address review comments received for the current application, ZTA 22-173.

There will be no communal dining or community laundry facilities as required for a Retirement Housing Complex. These affordable units will focus on the people who live there. The affordability of housing in Charles County has caused many low-to moderate income seniors to be priced out of the rental market. Unlike a Retirement Housing Complex, which has no income limitations, this proposal seeks to offer housing to persons 55 years or older that have average income levels at or below 60% of the area medium income (AMI), as those persons currently have limited options in the Charles County housing market and are most impacted when the rent at market affordable properties increases.

The Master's Child Church's current property has been used for institutional purposes for over 50 years. As a result, implementing the proposed use on this particular property would have no negative impacts on abutting properties or the surrounding community. This particular property is located less than a mile from properties situated in the RL, RO, CC, and CB Zones, and as such, the proposed use would not pose a considerable threat to the preservation goals of the WCD Zone. Transportation adequacy and public facilities requirements will be further reviewed and addressed at the time of Preliminary Subdivision Plan to ensure there is no negative impact to surrounding properties or the nearby transportation network.

The existing and proposed uses on this property are as follows:

- Daycare Facility (currently operational)

- Family Life Center (not started)
- Chapel (renovations underway, approved via SDP-160018)
- Sanctuary (not started)

C. **Bryans Road Sub-Area Plan**

On June 27, 2022, the draft Bryans Road Sub-Area Plan was presented to the Planning Commission. TMCC's current property is situated in the "South End Neighborhood" of the draft plan and the plan recommends that a senior living community be permitted on the 20 ± acre property. The draft plan further states that;

"Flexibility should be permitted in the type of age-targeted or senior living community that could be developed on the land owned by St. Mary's Star of the Sea, ranging from cottage-style houses to independent or assisted congregate housing. Allowance should be made in this area to permit supporting medical and professional services".

It should be noted that the St. Mary's Star of the Sea property is now owned by the TMCC.

IN SOUTH END IT IS RECOMMENDED THAT:

- Efforts continue to preserve and protect the Pomonkey Historic District and Pomonkey Forest, and to advance the concept of a Pomonkey Center for Cultural and Environmental Education (see page 29).
- No new access points should be allowed to/from MD 210; new residential development in the area should be accessed via Hungerford Road.
- Flexibility should be permitted in the type of age-targeted or senior living community that could be developed on the land owned by St. Mary's Star of the Sea, ranging from cottage-style houses to independent or assisted congregate housing. Allowance should be made in this area to permit supporting medical and professional services.

Big Idea



Investing in Affordable Senior Housing

Many families in Charles County are struggling with housing costs – whether seeking to purchase their first home, find an affordable apartment, maintain an existing home in good condition, or keep up with property taxes and utility bills. For older residents, the challenge is heightened by living on fixed income, higher medical expenses, and social isolation when they can no longer drive or have limited internet access. Programs like Habitat for Humanity, Rebuilding Together, or state-supported occupational therapy and rehabilitation can provide “stop gap” solutions to keep seniors in their homes longer; however there is also a broader need for housing that is targeted to the older residents of Bryans Road and western Charles County whether it be low-income senior apartments, cooperative housing, assisted living, or skilled nursing care.

There are both for-profit and non-profit developers of affordable housing for seniors that can be recruited to come to the Bryans Road area. Organizations like Episcopal Communities & Services (ECS), Catholic Charities, The Enterprise Foundation, Homes for America, and others will respond and assess opportunities when they are called on to do so by local leaders. Because the need for affordable senior housing is so great across the nation, it requires local leaders to “recruit” these organizations, help them find and permit sites, and partner with them throughout the development process. The Department of Planning and Growth Management, the Department of Community Services and community leaders should create an organized effort to bring affordable senior housing to Bryans Road.

While the Applicant is pleased that the draft Bryans Road Sub-Area Plan recognizes and encourages a senior living community use on the TMCC property, this plan, if approved, is still several years off from being implemented. Should the draft Bryans Road Sub-Area Plan be approved by the Board of County Commissioners, a Sectional Map Amendment (SMA) would then need to be prepared by staff, possibly within the following year, that implements the recommended land uses and any needed zoning category changes for properties within the plan area. Once drafted, the required SMA would have to go through public charets/community input and meetings, and ultimately be approved by both the Planning Commission and the Board of County Commissioners.

Even when those plans are fully completed, the use "Independent Senior Housing Complex" would still not exist in the County Code. Further, until such time as the draft sub-area plan and SMA are fully approved, the Applicant would have no idea, if and what, affordable senior housing uses would be permitted by right in whatever zone is implemented on the Property. It is clear that the completion of the Bryans Road Sub-Area Plan and SMA is still several years away, but the need for affordable, independent senior housing in the Bryans Road area (and Charles County in general) is immediate. The Applicant has spent over two years in the text amendment review process, (to include the review of prior text amendment application, ZTA #21-165). Based on the above information, it is not a practical or logical solution for the Applicant to wait several additional years to start the lengthy entitlement processes needed to implement the use in the WCD Zone.

It should be noted that a majority of the comments received throughout this review process pertain to the subject text amendment's compliance with the requirements of the WCD Zone. That is certainly expected as the use is currently being proposed in the WCD Zone. However, it is very likely that the property will be rezoned to another zoning designation through the approval of the Bryans Road Sub-Area Sectional Map Amendment, which recommends an age-targeted or senior living community on the TMCC Property. As previously stated, the Applicant has spent over two years in the text amendment review process. Although the approval of the SMA is still a few years away, the Applicant would respectfully request that the final Bryans Road Sub-Area Plan and SMA be amended to reflect an Independent Living Senior Housing Complex as a permitted use, should the subject text amendment be approved by the County Commissioners.

D. Why the Use Should be Permitted by Right (Subject to Specific Conditions at the time of permit):

RESPONSE: There is not enough affordable housing available for Charles County residents (incl. Seniors). The County Comprehensive Plan predicted that seniors would be a major population amongst homelessness by 2020. Further surveys conducted by TMCC shows that seniors struggle to pay market rent on a fixed income. In 2004, the County projected that the housing cost burden on Senior Citizens would triple by 2020. The skyrocketing rental prices for senior citizens and their limited income resources poses an immediate and eminent crisis for their independence and quality of life.

The special exception process would further delay the Applicant's ability to provide badly-needed housing for seniors in the county with moderate-to-low income levels, and would result in additional expenses to The Master's Child Church, a non-profit institutional organization. The

proposed use will be an extension of the existing institutional uses that have operated on the Property for over 50 years with no negative impacts to the surrounding properties or the transportation network. While the Applicant understands the additional community input that the special exception process allows, and why it is required for a standard market-rate Retirement Housing Complex, the Applicant's proposed use is intended to serve the community itself by providing housing options for income-restricted seniors that are not currently available in the area.

It is the Applicant's understanding, that based on several prior meetings with County Officials, there is strong support for the proposed use, as well as providing the most expedited path to the permit process due to the public benefit that use will provide to income-restricted seniors. The Applicant's proposed text amendment has been revised to include an amendment to Section 297-212, (Minimum Standards for Special Exceptions and Uses Permitted with Conditions), and includes the following specific requirements for an Independent Living Senior Housing Complex that must be met at the time of permit:

(137) 3.04.600 - INDEPENDENT LIVING SENIOR HOUSING COMPLEX. THIS USE IS PERMITTED WITH CONDITIONS IN THE WCD ZONE PROVIDED THAT THE FOLLOWING ARE MET:

- A. THE MINIMUM AREA SHALL BE THREE ACRES.**
- B. AN INDEPENDENT LIVING SENIOR HOUSING COMPLEX SHALL ABUT A PROPERTY OWNED BY A CHURCH THAT IS A MINIMUM OF 10 ACRES IN SIZE AND THAT HAS DIRECT ACCESS TO A ROADWAY OF ARTERIAL OR HIGHER CLASSIFICATION.**
- C. ALLOWED BUILDING TYPES INCLUDE SINGLE-FAMILY ATTACHED OR MULTIFAMILY DWELLING UNITS.**
- D. INDEPENDENT LIVING FACILITIES SHALL INCLUDE COMMON RECREATION, LIBRARY, MEETING SPACE AND OFFICE SPACE FOR MEDICAL AND PERSONAL SERVICES. THESE ANCILLARY SERVICES ARE INTENDED TO SERVE SENIORS WHO RESIDE ON THE PREMISES ONLY, AND ARE NOT AVAILABLE TO THE GENERAL PUBLIC UNLESS OTHERWISE PERMITTED WITHIN THE ZONE IN WHICH THE USE IS LOCATED.**
- E. THE PROJECT SHALL COMPLY WITH THE 2020 ENTERPRISE GREEN COMMUNITIES REQUIREMENTS, AS AMENDED FROM TIME TO TIME, OR COMPARABLE NATIONALLY RECOGNIZED STANDARD APPROVED FOR MULTIFAMILY PROJECT USE BY THE MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT. THE APPLICANT SHALL PROVIDE DOCUMENTATION DEMONSTRATING COMPLIANCE WITH THIS REQUIREMENT PRIOR TO THE ISSUANCE OF A FINAL USE & OCCUPANCY PERMIT.**

- F. ALL RESIDENTIAL UNITS SHALL BE LIMITED TO AFFORDABLE HOUSING FOR INDIVIDUALS WHO ARE 55 YEARS OF AGE AND OLDER ONLY, AND WHO ARE ABLE TO LIVE INDEPENDENTLY. THE TERM "AFFORDABLE" SHALL MEAN THAT THE AVERAGE HOUSEHOLD INCOME IN THE PROJECT MAY NOT EXCEED 60% OF THE AREA MEDIAN INCOME AS DEFINED FROM TIME TO TIME BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**

RESPONSE: The above conditions will ensure that the proposed use will be a substantial benefit to the community by providing housing options for income-restricted seniors that are not currently available in the area. The conditions limit all residential units to being affordable housing for individuals that are 55 years of age and older. Condition F further defines "Affordable" as meaning the average household income in the project may not exceed 60% of the area median income as defined by the U.S. Department of Housing and Urban Development. An Independent Living Senior Housing Complex would only be permitted in the WCD Zone provided it abuts property owned by a church that is a minimum of 10 acres in size and that has direct access to a roadway of arterial or higher classification. This requirement will protect a majority of the more isolated properties in the WCD Zone, and ensure that the use could not be implemented on properties having access on secondary or non-standard roadways that have limited capacity to handle additional AM & PM peak hour trips.

E. Specific Amendments Requested to Chapter 297 (Zoning Ordinance)

In order to add the proposed use of an Independent Living Senior Housing Complex (and the specific development requirements for this use) to the county code, the following sections are required to be amended:

Section 297-49(E), Article III, (Definition and Interpretations Section) – An amendment is requested to add Independent Living Senior Housing Complex to the definition section in order to define the proposed use, the minimum age requirement for the proposed use, the allowed building types, and the ancillary services that can be included to serve seniors who reside on the premises.

Section 297, Article IV, Figure IV-1, (Table of Permissible Uses) – An amendment is requested to add Independent Living Senior Housing Complex to the Table of Permitted Uses and to reflect that the use is permitted in the WCD Zone subject to conditions.

Attachment 9, Figure XX-1, (Table of Off-Street Parking Requirements) – An amendment is requested to add minimum parking requirements for an Independent Living Senior Housing Complex. In an effort to establish an appropriate parking requirement for the proposed use, the Applicant's architectural consultant, Wiencek & Associates Architects & Planners, researched several surrounding jurisdictions to determine the parking requirement for similar type uses. The results of this research are as follows:

- **Loudoun County, VA.** - "Elderly" housing rate - .25 spaces per unit.
- **Fairfax County, VA.** - "Independent Living" rate - .25 spaces per unit + 1 space per employee.
- **Prince Georges County, MD** - "Elderly" housing rate - .66 spaces per unit.
- **Montgomery County, MD** - "Independent Living" rate varies .5 to 1.0 spaces per unit (depending on location in the county), + .5 space per employee.

Based on the above research, and the need to reduce impervious surface coverage in the WCD Zone to the degree possible, the Applicant initially proposed a minimum parking requirement of .75 spaces per unit. However, based on comments received from the Planning Staff during the 1st and 2nd cycle review periods of the prior text amendment submission, the parking requirement was amended to reflect 1.0 parking space per unit. It is the Applicant's understanding that the Planning Staff is in agreement with the minimum parking requirements proposed for an Independent Living Senior Housing Complex.

Article VI, Section 297-98, (Base Zone Regulations, WCD Watershed Conservation District) – Two amendments are requested to this section. The first is an amendment to add a footnote to Section 297-98(B), (General Regulations), stating that in the case of an Independent Living Senior Housing Complex in the WCD Zone, the density requirements in Figure V-1 shall apply. This footnote is necessary as this section currently states that residential development is limited to a gross density of one unit per 20 acres which would not permit the development of an Independent Living Senior Housing Complex in the WCD Zone.

The maximum density proposed for an Independent Living Senior Housing Complex in the WCD Zone shall be no more than 32 dwelling units per acre. The current base density of 0.05 dwelling units per acre would not permit an Independent Living Senior Housing Complex in the WCD Zone or the building types proposed for an Independent Living Senior Housing Complex which include single-family attached or multifamily dwelling units. Although the subject text amendment is not specific to any one property in the WCD Zone, the overall Master's Child Church Property consists of 22.24 acres. The Property was formerly the site of the St. Mary's Star of the Sea School & Church and has been used for institutional purposes for over 50 years. Although the property as a whole is 22.24 acres, the proposed Independent Living Senior Housing Complex will be contained in a parcel that is a minimum of 3 acres in size. The new parcel is required for financing and settlement purposes. With that said, the proposed density of 32 dwelling units per acre had to be based on the 3-acre parcel containing the Independent Living Senior Housing Complex, (and not the 22.24 acres within the overall church property).

The second amendment requested is to Section 297-98(C)(2), (Exemptions from impervious surface restrictions), stating that in the case of an Independent Living Senior Housing Complex in the WCD Zone, the impervious surface coverage in Figure V1-10 shall apply. This amendment is necessary as this section currently states that impervious surface coverage, such

as buildings, pavement or other man-made materials, are limited to 8% of the property which would not currently permit an Independent Living Senior Housing Complex in the WCD Zone.

It should be noted that churches and schools are already exempt from the impervious surface coverage noted in this section. Although the Applicant for this text amendment is a church, and the specific conditions proposed for an Independent Living Senior Housing Complex (among other things) will require the use to abut property owned by a church that is a minimum of 10 acres in size, a blanket exemption to impervious surface coverage requirements is not being requested by the Applicant. An impervious surface coverage requirement for the proposed use has been added to Figure V1-10 that will allow an Independent Living Senior Housing Complex to be constructed while still keeping with the intent and spirit of the WCD Zone to the greatest degree possible.

Chapter 297, Attachment 3 (Zoning Regulations), Figure VI-10, (Schedule of Zone Regulations: Watershed Conservation District Zone) – An amendment is requested to establish the minimum net lot area, minimum yard requirements, maximum lot coverage, and maximum impervious surface ratio for an Independent Living Senior Housing Complex in the WCD Zone.

Attachment 2, Figure V, (Residential Densities), Figure V-1 (Maximum Residential Densities) - An amendment is requested to add a footnote to Figure V-1 stating that the maximum density for an Independent Living Senior Housing Complex in the WCD Zone shall be no more than 32 dwelling units per acre. This footnote is necessary as this section currently establishes a base density of 0.05 dwelling units per acre for conventional or cluster development in the WCD Zone which would not permit the development of an Independent Living Senior Housing Complex. The current base density of 0.05 dwelling units per acre in this section would not permit the building types proposed for an Independent Living Senior Housing Complex which include single-family attached or multifamily dwelling units.

Although the subject text amendment is not specific to any one property in the WCD Zone, the overall Master's Child Church Property consists of 22.24 acres. The Property was formerly the site of the St. Mary's Star of the Sea School & Church and has been used for institutional purposes for over 50 years. Although the property as a whole is 22.24 acres, the proposed Independent Living Senior Housing Complex will be contained in a parcel that is a minimum of 3-acres in size. The new parcel is required for financing and settlement purposes. With that said, the proposed density of 32 dwelling units per acre had to be based on the 3-acre parcel containing the Independent Living Senior Housing Complex, (and not the 22.24 acres within the overall church property).

Figure V-2, Residential Density Ranges, (Dwelling Units per Acre) - Similar to the section noted above, an amendment is requested to add a footnote to Figure V-2 stating that the maximum density for an Independent Living Senior Housing Complex in the WCD Zone shall be no more than 32 dwelling units per acre. This footnote is necessary, as this section currently establishes a base

density of 0.05 dwelling units per acre, and further states that density bonuses are not permitted in the WCD Zone. The current base density of 0.05 dwelling units per acre in this section would not permit an Independent Living Senior Housing Complex in the WCD Zone or the building types proposed for an Independent Living Senior Housing Complex which include single-family attached or multifamily dwelling units.

Article XIII, (Minimum Standards for Special Exceptions and Uses Permitted with Conditions) - Section 297-211, (Alphabetical listing) - An amendment requested to this section to add an Independent Living Senior Housing Complex to the alphabetical listing of uses that include Minimum Standards for Special Exceptions and Uses Permitted with Conditions. Specific use conditions for an Independent Living Senior Housing Complex that are required at the time of permit are being proposed by the Applicant. As a result, it is necessary to add the proposed use to the alphabetical listing in Section 297-211.

Article XIII, (Minimum Standards for Special Exceptions and Uses Permitted with Conditions) - Section 297-212, (Uses corresponding with Table of Permissible Uses) – An amendment is requested to this section to add specific use conditions for an Independent Living Senior Housing Complex that would be required at the time of permit. The specific use conditions will ensure that the proposed use will be a substantial benefit to the community by providing housing options for income-restricted seniors that are not currently available in the area. These conditions limit all residential units to being affordable housing for individuals that are 55 years of age and older. Proposed Condition F further defines “Affordable” as meaning the average household income in the project may not exceed 60% of the area median income as defined by the U.S. Department of Housing and Urban Development.

Among other requirements, these specific use conditions require a minimum net lot area of three (3) acres for the proposed use and would only permit an Independent Living Senior Housing Complex in the WCD Zone provided the use abuts a property owned by a church that is a minimum of 10 acres in size, and that has direct access to a roadway of arterial or higher classification. This requirement will protect a majority of the more isolated properties in the WCD Zone and would ensure that the use could not be implemented on properties that only have access on secondary or non-standard roadways that may have limited capacity to handle additional AM & PM peak hour trips. The requirement to abut property owned by a church that is a minimum of 10 acres in size may further help to ensure the proposed use is an extension of an existing, non-profit, institutional use, and therefore, being proposed as a benefit to serve the surrounding community. These conditions also require substantial compliance with the 2020 Enterprise Green Communities requirements or comparable nationally recognized standard approved for multifamily projects by the Maryland Department of Housing and Community Development, and that documentation demonstrating compliance with this requirement be provided by the Applicant prior to the issuance of final use and occupancy permit.

F. Conclusion:

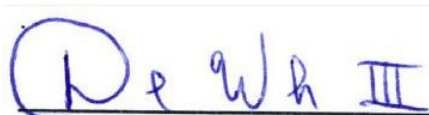
The initial text amendment application for The Master's Child Church (ZTA #21-165) was submitted to the Planning Department back on December 11, 2020. The prior application went through four separate review cycles with the Planning Staff before being transmitted to the Planning Commission for consideration. At the July 27, 2022, Board of County Commissioner's Hearing, the County Attorney stated that there was conflicting language included in one of the specific use conditions proposed at that time, (the word "accessory" in Condition B). The Commissioner's requested that the language in Condition "B" be amended, and that a new text amendment application be submitted as quickly as possible so that it can be brought back before the Planning Commission and Board of County Commissioners as soon as possible.

At the writing of this statement, the Applicant (who is a non-profit entity) has spent over two (2) years pursuing the text amendment process. Since only very minor revisions have occurred (at the request of the County Commissioners and staff) when compared to the prior text amendment application, the Applicant is very hopeful that the Planning Staff will expedite their review and transmit this second application to the Planning Commission and Board of County Commissioners for consideration as quickly as possible.

In closing, the Applicant's proposed use will be a substantial benefit to the community by providing needed housing options for income-restricted seniors that are not currently available in the area. As such, we would truly appreciate the Planning Staff's favorable recommendation to be transmitted to the Planning Commission and Board of County Commissioners as quickly as possible.

Please feel free to reach out to me if you have any questions or concerns.

Respectfully submitted,
SHIPLEY & HORNE, P.A.



Dennis Whitley, III, Esq.
1101 Mercantile Lane, Suite 240
Largo, MD 20774

DW/jjf
cc: Ms. Cheryl Robinson
Mr. Tom Gallagher
Mr. Mike Przybocki
Mr. Scott S. Matties