TO: Honorable Chairman and Members of the Okaloosa County Board of Adjustment

THROUGH: Elliot Kampert, Director

FROM: Planning & Development Review Staff

SUBJECT: 411330-BOA-2017, Special Exception Request

AGENDA DATE: May 10, 2017

APPLICANT(S): Randall Hilburn on Behalf of Zeb and Sarah Watts

OWNER(S): Zeb and Sarah Watts

LOCATION: 42301 West James Lee Boulevard (Highway 90) Crestview, Florida 32536

PARCEL INFORMATION:
- Property Appraiser’s Parcel ID Number(s): 12-3N-24-0000-0032-0000
- Property contains 6.4 acres more or less
- BCC District: (1) Commissioner Fountain
- BOA District: (1) Robert Ambrose
- Future Land Use Map Designation: Low Density Residential (north half) Mixed Use (South Half)
- Zoning District: Residential-I (R-1, north half) Mixed Use (MU, South Half)
- Current Use: Single Family Home

SURROUNDING LAND USES (see Attachment B):
- North: Low Density Residential Detached Single Family Homes
- South: Vacant Mixed Use Property, Highway 90
- East: Low Density Residential Detached Single Family Homes in R-1 and vacant MU land
- West: Low Density Residential Detached Single Family Homes in both R-1 and MU zones

REQUESTED SPECIAL EXCEPTION: A Special Exception pursuant to sections 2.03.04.3, 2.03.05.2, and 11.02.09.2 of the Okaloosa County Land Development Code filed by Randall Hilburn of Westerra Development, Inc. as the authorized agent of the property owners, Zeb & Sarah Watts, to allow an additional four (4) residents (10 residents total) at a community residential home in the R-1 zoning district to be located on the 6.4-acre parcel (Parcel ID No. 12-3N-24-0000-0032-0000) on the north side of State Road 90, immediately east of Lee Farm Boulevard in Crestview, Florida (see Attachment A. Location Map).

STAFF ANALYSIS: The property owners, Zeb and Sarah Watts, are currently remodeling the existing single family home on the subject parcel which will, upon completion of the remodeling, be utilized as a community residential home for 5 or fewer residents as allowed by Section
2.03.04.3 of the County Land Development Code (LDC) in accordance with Chapter 419 of the Florida Statutes which stipulates that community residential homes licensed by the State of Florida with 6 or fewer residents must be considered as a single family residence for purposes of local zoning. The subject property is designated as Mixed Use (southern half) and Low Density Residential (northern half) on the Comprehensive Plan Future Land Use Map and is within the R-1 zoning district (see Attachment D, Future Land Use and Zoning). The existing home currently being remodeled is entirely within the R-1 portion of the property.

As stated in the application packet and transmittal letters provided by the applicants' authorized agent, Randall Hilburn of Westerra Development, the proposed home for elderly persons will be licensed by the Florida Department of Elder Affairs (FDoE). However, neither the FDoE nor any other agency will serve as the home's sponsor as provided in sections 419.001(1)(f) and 419.001(3) of the Florida Statutes (see Attachment E), nor will any agencies be sending residents to the home. It will be used as a residence only, with no medical care, mental health counseling, physical therapy, or other services. The staff will not reside at the property, but will work in 8-hour shifts to provide assistance as needed with simple daily activities.

As further stated by the applicants' representative, the home will appear as a detached single family home such as occur in the area surrounding the subject property (see Attachment B, aerial photo, and Attachment C, Existing Land Uses), and has further opined that there will be no negative traffic impacts due to the nature of the proposed use. Access to the home will be from the existing driveway serving the property without further incursion into the adjacent residential areas. Finally, the applicant's representative has stated that, even though it would not be required by the County Land Development Code, if the Special exception is granted, the applicants are willing to install a landscape buffer along the north, east, and west property lines of the portion of the property within the R-1 District. If the Special Exception is granted, the applicants have stated through their representative that they will construct an addition of 1,326 square feet to the existing single-family residence to provide sufficient space for a 10-resident community residential home.

Section 2.03.05 of the Land Development Code provides the uses that may be allowed by Special Exception in the R-1 zone, including Section 2.03.05.2 that allows "uses which, in the opinion of the Planning Official, are similar in nature to other uses allowed either as permitted uses or special exceptions." Based on the information provided in the application and transmittal letters provided by Mr. Hilburn, the Planning Official has determined that the property owners may apply for a Special Exception for the proposed use.

Section 11.02.09 of the LDC (see Attachment F.) establishes the powers and duties of the Board of Adjustment (BOA). Section 11.02.09.2 provides that the BoA is authorized to grant special exceptions, but in so doing it must find that, "the granting will not adversely affect the public interest." Section 11.02.09.2 also authorizes the BoA to "prescribe appropriate conditions and safeguards in conformity with this ordinance."

PUBLIC COMMENT/OPPOSITION: As of the date of this writing (4/30/17) staff has received no opposition to the requested special exception. However, there was public opposition from surrounding property owners when the applicants presented a request to rezone the northern portion of the property from R-1 to MU to allow a similar use which would have consisted of the
existing home plus several small cottages also to be used for elderly housing. The applicants withdrew that petition and have opted to apply for the requested special exception for the existing single family home only (no detached cottages).

**STAFF POSITION:** Staff has no objection to the proposed special exception.

**RECOMMENDATION:** Staff recommends that the Board of Adjustment conduct the public hearing and, after due consideration of the facts presented with this staff report as well as any facts and testimony as may be presented during the public meeting, either approve, approve with conditions, or deny the requested special exception.

Attachments:

Attachment A. Location Map
Attachment B. Aerial Photo
Attachment C. Existing Land Uses
Attachment D. Future Land Use and Zoning Maps
Attachment E. Chapter 419, Florida Statutes
Attachment F. Section 11.02.09 of the Okaloosa County Land Development Code
ATTACHMENT - A
12-3N-24-0000-0032-0000

Location Map

Legend
- Roads

SUBJECT PROPERTY
Existing Land Use Map
419.001 Site selection of community residential homes.—

(1) For the purposes of this section, the term:

(a)  “Community residential home” means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Families or licensed by the Agency for Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.

(b)  “Licensing entity” or “licensing entities” means the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Families, or the Agency for Health Care Administration, all of which are authorized to license a community residential home to serve residents.

(c)  “Local government” means a county as set forth in chapter 7 or a municipality incorporated under the provisions of chapter 165.

(d)  “Planned residential community” means a local government-approved, planned unit development that is under unified control, is planned and developed as a whole, has a minimum gross lot area of 8 acres, and has amenities that are designed to serve residents with a developmental disability as defined in s. 393.063 but shall also provide housing options for other individuals. The community shall provide choices with regard to housing arrangements, support providers, and activities. The residents’ freedom of movement within and outside the community may not be restricted. For the purposes of this paragraph, local government approval must be based on criteria that include, but are not limited to, compliance with appropriate land use, zoning, and building codes. A planned residential community may contain two or more community residential homes that are contiguous to one another. A planned residential community may not be located within a 10-mile radius of any other planned residential community.

(e)  “Resident” means any of the following: a frail elder as defined in s. 429.65; a person who has a handicap as defined in s. 760.22(7)(a); a person who has a developmental disability as defined in s. 393.063; a nondangerous person who has a mental illness as defined in s. 394.455; or a child who is found to be dependent as defined in s. 39.01 or s. 984.03, or a child in need of services as defined in s. 984.03 or s. 985.03.

(f)  “Sponsoring agency” means an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home.
(2) Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes are not located within a radius of 1,000 feet of another existing such home with six or fewer residents or within a radius of 1,200 feet of another existing community residential home. Such homes with six or fewer residents are not required to comply with the notification provisions of this section; provided that, before licensure, the sponsoring agency provides the local government with the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located in order to show that there is not a home of six or fewer residents which otherwise meets the definition of a community residential home within a radius of 1,000 feet and not a community residential home within a radius of 1,200 feet of the proposed home. At the time of home occupancy, the sponsoring agency must notify the local government that the home is licensed by the licensing entity. For purposes of local land use and zoning determinations, this subsection does not affect the legal nonconforming use status of any community residential home lawfully permitted and operating as of July 1, 2016.

(3)(a) When a site for a community residential home has been selected by a sponsoring agency in an area zoned for multifamily, the agency shall notify the chief executive officer of the local government in writing and include in such notice the specific address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. Such notice shall also contain a statement from the licensing entity indicating the licensing status of the proposed community residential home and specifying how the home meets applicable licensing criteria for the safe care and supervision of the clients in the home. The sponsoring agency shall also provide to the local government the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located. The local government shall review the notification of the sponsoring agency in accordance with the zoning ordinance of the jurisdiction.

(b) Pursuant to such review, the local government may:
   1. Determine that the siting of the community residential home is in accordance with local zoning and approve the siting. If the siting is approved, the sponsoring agency may establish the home at the site selected.
   2. Fail to respond within 60 days. If the local government fails to respond within such time, the sponsoring agency may establish the home at the site selected.
   3. Deny the siting of the home.

(c) The local government shall not deny the siting of a community residential home unless the local government establishes that the siting of the home at the site selected:
   1. Does not otherwise conform to existing zoning regulations applicable to other multifamily uses in the area.
   2. Does not meet applicable licensing criteria established and determined by the licensing entity, including requirements that the home be located to assure the safe care and supervision of all clients in the home.
   3. Would result in such a concentration of community residential homes in the area in proximity to the site selected, or would result in a combination of such homes with other residences in the community, such that the nature and character
of the area would be substantially altered. A home that is located within a radius of 1,200 feet of another existing community residential home in a multifamily zone shall be an overconcentration of such homes that substantially alters the nature and character of the area. A home that is located within a radius of 500 feet of an area of single-family zoning substantially alters the nature and character of the area.

(4) Community residential homes, including homes of six or fewer residents which would otherwise meet the definition of a community residential home, which are located within a planned residential community are not subject to the proximity requirements of this section and may be contiguous to each other. A planned residential community must comply with the applicable local government’s land development code and other local ordinances. A local government may not impose proximity limitations between homes within a planned residential community if such limitations are based solely on the types of residents anticipated to be living in the community.

(5) All distance requirements in this section shall be measured from the nearest point of the existing home or area of single-family zoning to the nearest point of the proposed home.

(6) If agreed to by both the local government and the sponsoring agency, a conflict may be resolved through informal mediation. The local government shall arrange for the services of an independent mediator. Mediation shall be concluded within 45 days of a request therefor. The resolution of any issue through the mediation process shall not alter any person’s right to a judicial determination of any issue if that person is entitled to such a determination under statutory or common law.

(7) The licensing entity shall not issue a license to a sponsoring agency for operation of a community residential home if the sponsoring agency does not notify the local government of its intention to establish a program, as required by subsection (3). A license issued without compliance with the provisions of this section shall be considered null and void, and continued operation of the home may be enjoined.

(8) A dwelling unit housing a community residential home established pursuant to this section shall be subject to the same local laws and ordinances applicable to other noncommercial, residential family units in the area in which it is established.

(9) Nothing in this section shall be deemed to affect the authority of any community residential home lawfully established prior to October 1, 1989, to continue to operate.

(10) Nothing in this section shall permit persons to occupy a community residential home who would constitute a direct threat to the health and safety of other persons or whose residency would result in substantial physical damage to the property of others.

(11) The siting of community residential homes in areas zoned for single family shall be governed by local zoning ordinances. Nothing in this section prohibits a local government from authorizing the development of community residential homes in areas zoned for single family.

(12) Nothing in this section requires any local government to adopt a new ordinance if it has in place an ordinance governing the placement of community residential homes that meet the criteria of this section. State law on community residential homes controls
over local ordinances, but nothing in this section prohibits a local government from adopting more liberal standards for siting such homes.
11.02.09 Powers and Duties: The Board of Adjustment shall have the following powers and duties:

1. **Administrative Review:** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Administrative Official in the enforcement of the Land Development Code except appeals regarding construction matters.

2. **Special Exceptions:** Conditions governing applications; procedures to hear and decide only Special Exceptions as the Board of Adjustment is specifically authorized to pass on under the terms of this ordinance; to decide questions as are involved in determining when special exceptions should be granted and to grant special exceptions when in harmony with the purpose and intent of this ordinance. In granting any special exception, the board shall find that the granting will not adversely affect the public interest. In granting any special exception, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the special exception is granted, shall be deemed a violation of this ordinance. The Board of Adjustment may prescribe a reasonable time limit within which the action required for the special exception shall be begun or completed or both.

3. **Variances:** Conditions governing applications, procedures; to authorize upon appeal such variances from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary and undue hardship. In order to authorize any variance from the terms of this ordinance, the Board of Adjustment must and shall find:
   
   a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district;

   b. That the special conditions and circumstances do not result from the actions of the applicant;

   c. That granting the variance requested will not confer on the applicant any special privilege that is denied by the Land Development Code to other lands, buildings or structures in the same zoning district;

   d. That literal interpretation of the provisions of the Land Development Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would work unnecessary and undue hardship on the applicant;
e. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure; and

f. That the grant of the variance will be in harmony with the general intent and purpose of the Land Development Code, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

g. In granting any variance, the Board of Adjustment may prescribe a reasonable time limit within which the action required for the variance shall be begun or completed or both. Under no circumstances, except as permitted above, shall the Board of Adjustment grant a variance to permit a use not generally or by special exception permitted in the zoning district. No non-conforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

h. Reference other sections of this ordinance for variances which may be granted by the Planning Commission or the County Public Works Department.

i. In accordance with Chapter 187.201 F.S., State Comprehensive Plan, Goal (15) Property Rights, and Ordinance No. 90-1, Goal 7.B, the Board of Adjustment may grant a variance to any regulation in the Land Development Code whenever it is apparent that a taking of private property would otherwise occur. Said variance shall only be granted for a use or development which is compatible with the surrounding area and does not impose an excessive burden or have a negative impact on surrounding or adjacent uses or on community facilities or services.

4. **Board Has Powers of Administrative Official on Appeals:** The Board of Adjustment may, so long as such action is in conformity with the terms of the Land Development Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the Administrative Official from whom the appeal is taken. The concurring role of the majority of all the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant of any matter upon which the board is required to pass under any such ordinance.

5. **In the event a special exception or variance is denied by the Board of Adjustment:** The applicant shall not reapply for a special exception or variance for the same use within one (1) year after the date of first denial unless a physical change has been made to the structure/s or the plans have been modified to reduce the impact. Application fee for the same use will be doubled with each new submittal within the (1) year date of denial. **EXCEPTION:** This does not apply if the variance or special exception request pertains to a different use.
3.19-ACRE PORTION OF PROPERTY CURRENTLY DESIGNATED AS:
ZONING = R-1

SOUTHERN PORTION OF PROPERTY CURRENTLY DESIGNATED AS:
ZONING = MU