

IN THE MATTER OF
THE APPLICATION OF
NORTH OAKS REAL ESTATE PARTNERSHIP
AND GWYNNS FALLS LTD PARTNERSHIP
FOR SPECIAL HEARING, SPECIAL EXCEPTION
AND VARIANCE ON PROPERTY LOCATED AT
725 MT WILSON LANE; AND CRG PLAN
APPROVAL /FILE # II-329

2nd ELECTION DISTRICT
2nd COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 00-136-SPHX and
* Case No. CBA-00-132

* * * * *

ORDER OF DISMISSAL OF PETITIONS and DISMISSAL OF APPEALS

This case comes to the Board on appeals filed by Julius W. Lichter, Esquire, LAW OFFICES OF PETER G. ANGELOS , P.C., on behalf of The Mount Wilson Limited Partnership, LLP; by J. Carroll Holzer, Esquire, HOLZER & LEE, on behalf of Ner Israel Rabbinical College, Inc.; by Peter M. Zimmerman, People's Counsel for Baltimore County; and by C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS CHTD., on behalf of Cobblestone Homeowners Assn., Inc., and Charles Levine from the decision of the Deputy Zoning Commissioner in Case No. 00-136-SPHXA; and on appeals filed by Julius W. Lichter, Esquire, LAW OFFICES OF PETER G. ANGELOS , P.C., on behalf of The Mount Wilson Limited Partnership, LLP; by J. Carroll Holzer, Esquire, HOLZER & LEE, on behalf of Ner Israel Rabbinical College, Inc.; and by C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS CHTD., on behalf of Cobblestone Homeowners Assn., Inc., from the decision of the County Review Group (CRG) in Case No. CBA-00-132 /CRG File No. II-329.

WHEREAS, the Board is in receipt of a withdrawal of Petition for Special Exception, Petition for Special Hearing, and Petition for Variance dated October 2, 2001, filed in Case No. 00-136-SPHXA by Robert A. Hoffman, Esquire, Counsel for North Oaks Real Estate Partnership and Gwynns Falls Limited Partnership, Petitioners, for reasons as stated therein (a copy of which is attached hereto and made a part hereof); and

WHEREAS, the Board is in receipt of letters of withdrawal of appeals filed by Dino C. LaFiandra, Esquire, LAW OFFICES OF PETER G. ANGELOS , P.C., on behalf of The Mount Wilson Limited Partnership, LLP and dated January 11, 2001; by J. Carroll Holzer, Esquire, HOLZER & LEE, dated

November 16, 2001, on behalf of Ner Israel Rabbinical College, Inc.; and by C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS CHTD, dated October 30, 2001, on behalf of Cobblestone Homeowners Assn., Inc., (copies of which are attached hereto and made a part hereof); and

WHEREAS, said Counsel for Petitioners requests that the Petition for Special Hearing, Petition for Special Exception and Petition for Variance be withdrawn as of October 2, 2001; and

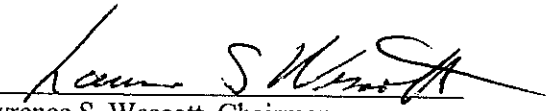
WHEREAS, Counsel for Protestants request that the appeals filed in this matter be withdrawn as of the dates indicated above;

IT IS THEREFORE, this 29th day of November, 2001, by the County Board of Appeals of Baltimore County

ORDERED that said Petition for Special Hearing, Petition for Special Exception, and Petition for Variance filed in Case No. 00-136-SPHXA be and the same are **WITHDRAWN AND DISMISSED** pursuant to the attached letter of withdrawal; and it is further

ORDERED that the appeals filed in this matter be and the same are hereby **WITHDRAWN AND DISMISSED**.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Chairman


Charles L. Marks


Margaret Worrall

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE S/S Mt. Wilson Lane, 2407' N of Winands Road 2 nd Election District 2 nd Councilmanic District (725 Mt. Wilson Lane)	* * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 00-136-SPHXA
North Oaks Real Estate Partnership and Gwynns Falls Limited Partnership Petitioners	* * * * * *	

* * * * *

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

WHEREAS, this matter came before this Deputy Zoning Commissioner by way of a Requested Special Hearing, Special Exception and Variance filed by the Petitioners requesting approval of a continuing care facility on property located on the south side of Mt. Wilson Lane, north of Winands Road. The subject request was approved by way of a decision dated the 22nd day of November, 1999.

WHEREAS, after the issuance of my Order, a Motion for Reconsideration was filed by the Petitioners dated the 15th day of December, 1999, requesting certain modifications to the decision rendered in my previous Order.

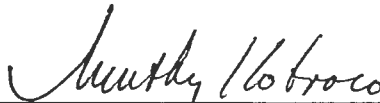
NOW, THEREFORE, having considered the Motion for Reconsideration filed by the Petitioners herein, I find that my original Findings of Fact and Conclusions of Law should be amended to provide as follows:

1. As a result of a meeting between the Petitioners and the Director of the Office of Planning, Arnold Pat Keller, Restriction No. 3, previously imposed by my original decision, shall be deleted in its entirety. Any further development occurring outside the special exception area identified on the site plan submitted should be reviewed and approved by the Director of the Department of Permits and Development Management.

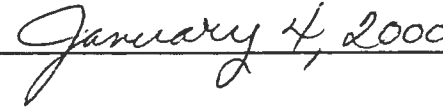
ORDER RECEIVED FOR FILING
Date 1/14/2000
By R. J. Garrison

2. The Petitioners requested that the utilization of the special exception granted in my original Order be extended to 5 (five) years in lieu of the normally permitted 2 (two) years. That request was omitted from my original Order and, therefore, this Order shall provide that the Petitioners shall have 5 (five) years within which to utilize the special exception granted by way of my Order dated the 22nd day of November, 1999.
3. Finally, the original Findings of Fact and Conclusions of Law reference the special exception area as being 28 acres. The Petitioner has pointed out, by way of his motion for reconsideration, that the actual special exception area is 24 acres. Therefore, the Finding shall be amended to accurately show that the special exception area is 24 acres in size.

Any appeal from this decision must be made within thirty (30) days from the date of this Order.

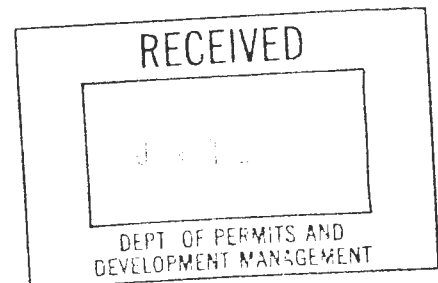

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

DATED: 

ORDER PREPARED FOR FILING
DATE 1/4/2000
BY J.R. Jameson

E-323



IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
S/S Mt. Wilson Lane, 2407' N	*	DEPUTY ZONING COMMISSIONER
of Winands Railroad		
2 nd Election District	*	OF BALTIMORE COUNTY
2 nd Councilmanic District		
(725 Mt. Wilson Lane)	*	CASE NO. 00-136-SPHXA
North Oaks Real Estate Partnership and	*	
Gwynns Falls Limited Partnership		
Petitioners		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing, Special Exception and Variance for property located at 725 Mt. Wilson Lane. The Petitions were filed by Robert A. Hoffman, attorney at Law, representing the North Oaks Real Estate Partnership and the Gwynns Falls Limited Partnership. Specifically, the special exception request is to approve a continuing care facility in a DR3.5 zone pursuant to Section 432.1.A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) and to approve an increase in the residential density standards for elderly housing on the subject property which contains institutional buildings from a 3.5 density units per acre to 11.3 density units per acre in accordance with Section 432.3 of the Baltimore County Zoning Regulations. In addition to the special exception request, the Petitioners are also requesting a special hearing to amend the relief which was granted in Case Nos. 86-2-XA and 88-19-XSPH. Finally, variances are being requested as follows:

1. Variance to Sections 1B01.2.B.2 and 504.2 of the Baltimore County Zoning Regulations and Section II.A.29 (Non-Residential Principal Buildings in DR Zones) of the Comprehensive Manual of Development Policies to allow building elevation widths of 525 ft. and 550 ft. in lieu of the permitted 300 ft.
2. Variance to Section 1B01.2.C.a of the Baltimore County Zoning Regulations to permit a front yard setback of 21 ft. in lieu of the required 50 ft.

3. Variance to Section 1B01.2.C.a of the Baltimore County Zoning Regulations to permit a side yard setback of 0 ft. in lieu of 20 ft., if necessary.
4. Variance to Section 1B01.2.C.a of the Baltimore County Zoning Regulations to permit a rear yard setback of 0 ft. in lieu of 30 ft., if necessary.

Appearing at the hearing on behalf of the petition request were Robert Hoffman, attorney at law, representing the various owners and operators of the subject property. In addition many representatives from the entities involved also attended the hearing, all of whom signed in on the Petitioners' Sign-In Sheet. There were no protestants in attendance.

Testimony and evidence indicated that the property which is the subject of this request is known as the "North Oaks Retirement Community". The retirement community is located on 200 acres of land situated on the west side of I-795 and is accessed by Mt. Wilson Lane. The subject property was the former site of the Mt. Wilson Sanitarium, which was taken over by North Oaks in June of 1988. North Oaks has operated a convalescent and nursing home operation on the subject property since 1988. While the overall tract of land comprises 200 acres, the special exception request herein is limited to a 28-acre parcel outlined in pink on Petitioners' Exhibit No. 1, the site plan of the property. Within this 28-acre tract are several buildings, outbuildings and parking lots and drive aisles that service the North Oaks Retirement Community. The Petitioners are desirous of constructing additional buildings that will be added onto the existing structures on the property. As is customary with many retirement communities, all of the buildings will be connected to provide easy access by the residents and staff who utilize this facility. By virtue of these connections, the buildings themselves exceed the permitted length requirements found within the Baltimore County Zoning Regulations. Therefore, a variance is generated for that reason.

In addition, the Petitioners are limiting the amount of the special exception area which was previously approved in Case Nos. 86-2-XA and 88-19-XSPH. In those cases, the special exception area covered the entire 200 acre parcel of land. The Petitioners wish to amend the relief granted in those cases by way of this special hearing request filed herein to limit the special exception area to the 28 acres highlighted on the site plan submitted. This 28 acres is the actual land upon which this retirement-convalescent home is situated.

As a result of limiting the special exception area to the aforementioned 28 acres, certain variances have been generated. Specifically, setback variances are being requested by virtue of the creation of the new special exception lines which have decreased setbacks, as well as the fact that the overall property is 2 separate parcels, owned by two different entities. Therefore, some of the setback requests are from an interior lot line and not necessarily a setback from adjacent properties.

Finally, the Petitioners are requesting special exception relief to increase the permitted density on the subject property utilizing Section 432.3 of the Baltimore County Zoning Regulations. That particular section of the B.C.Z.R. allows for a waiver of maximum residential density standards for elderly housing facilities which are located on property containing institutional or historic buildings. The testimony and evidence demonstrated that the property which is the subject of this request has, in fact, been utilized as a sanitarium in the past, as well as an elderly housing institution at this time. Therefore, it is appropriate for the Petitioners' request to waive the maximum residential density so long as the remaining provisions of Section 432.3 are met. I find that the Petitioners have, in fact, satisfied Section 432.3.A.2 in that the buildings that were previously utilized for institutional purposes have in fact continued their use by North Oaks in their operation of this retirement community.

The requested increase in density will allow the additional buildings to be constructed on the property which will better serve the increased need for such a facility in the Owings Mills area. In accordance with Section 432.3.C, I hereby find that the subject property is suitable for the type of development proposed by this Petitioner. Furthermore, as was testified to at the hearing, I find that the balance of the tract outside the building envelope will be used only for such open space and recreational uses as are permitted by right or by special exception in DR zones. This development will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties and the general neighborhood, and, finally, the Petitioners have in fact satisfied all of the criteria as stated in Section 502.1 of the Baltimore County Zoning Regulations. These findings are made pursuant to Section 432.3.C.1-4. Therefore, the petition for special exception to increase density on the subject property to DR.11.3 density units per acre shall be granted.

Finally, as is required by Section 432.3.f, the Petitioners have attempted to provide for a system of community participation by establishing a board of advisors, in accordance with that section. The Petitioners advertised for board members, however, due to a lack of response from the community, no board has been established. The Petitioners shall continue in their efforts to establish this board in accordance with Section 432.C.f of the B.C.Z.R.

In addition to satisfying the requirements of the Baltimore County Zoning Regulations as aforementioned, the Petitioners also submitted their proposal to the Office of Planning for their review and comment. The Planning Office, by comment dated November 16, 1999, recommends approval of the Petitioners' request and further indicated that the compatibility objectives outlined in Section 26-282 of the Development Regulations have in fact been

satisfied. The Planning Office has made recommendations which will be incorporated at the end of this Order.

It is clear that the B.C.Z.R. permits the use proposed in a DR3.5 zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioners had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioners have shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioners' Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioners and their property. McLean v. Soley, 270 Md. 208

(1973). To prove practical difficulty for an area variance, the Petitioners must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. Of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variances requested should be granted.

In addition, the Petitioners have satisfied all of the additional requirements imposed upon them by Section 432 of the B.C.Z.R.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 22nd day of November, 1999 that the Petitioners' Request for Special Exception to approve a continuing care facility in a DR3.5 zone pursuant to Section 432.1.A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) and to approve an increase in the residential

density standards for elderly housing on the subject property which contains institutional buildings from a 3.5 density units per acre to 11.3 density units per acre in accordance with Section 432.3 of the Baltimore County Zoning Regulations, be and is hereby GRANTED.

IT IS FURTHER ORDERED, that the Petition for Special Hearing request to amend the relief which was granted in Case Nos. 86-2-XA and 88-19-XSPH, be and is hereby GRANTED.

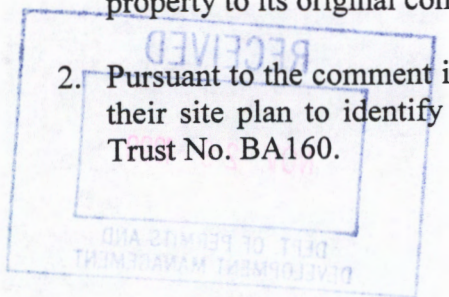
IT IS FURTHER ORDERED, that the Petition for Variance filed requesting the following relief:

1. Variance to Sections 1B01.2.B.2 and 504.2 of the Baltimore County Zoning Regulations and Section II.A.29 (Non-Residential Principal Buildings in DR Zones) of the Comprehensive Manual of Development Policies to allow building elevation widths of 525 ft. and 550 ft. in lieu of the permitted 300 ft.
2. Variance to Section 1B01.2.C.a of the Baltimore County Zoning Regulations to permit a front yard setback of 21 ft. in lieu of the required 50 ft.
3. variance to Section 1B01.2.C.a of the Baltimore County Zoning Regulations to permit a side yard setback of 0 ft. in lieu of 20 ft., if necessary.
4. Variance to Section 1B01.2.C.a of the Baltimore County Zoning Regulations to permit a rear yard setback of 0 ft. in lieu of 30 ft., if necessary.

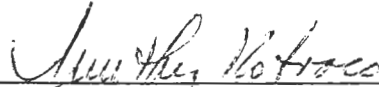
be and is hereby GRANTED, subject, however, to the restrictions listed below which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2. Pursuant to the comment issued by the Planning Office, the Petitioners shall amend their site plan to identify the three (3) buildings with the MH Maryland Historic Trust No. BA160.



3. Any subsequent development occurring outside this special exception area, in the area which was the subject of the original CRG approval for this property shall be reviewed through the new development review process and shall not be considered an amendment to the previously approved CRG plan.
4. When applying for a building permit, the site plan/landscape plan filed must reference this case and set forth and address the restrictions of this Order.



TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

