

IN THE MATTER OF THE * BEFORE THE
THE APPLICATION OF *
ROBERT F. ADSIT & MARIO VITALE -- * COUNTY BOARD OF APPEALS
Owners; HARBOR MANAGEMENT
SERVICES – Developer; FOR A * OF
SPECIAL EXCEPTION AND VARIANCE *
ON PROPERTY LOCATED ON THE W/S * BALTIMORE COUNTY
OF FALLS ROAD AT HOLLINS LANE
3rd ELECTION DISTRICT * CASE NO. 00-259-XA
2ND COUNCILMANIC DISTRICT
* * * * *

ORDER OF DISMISSAL

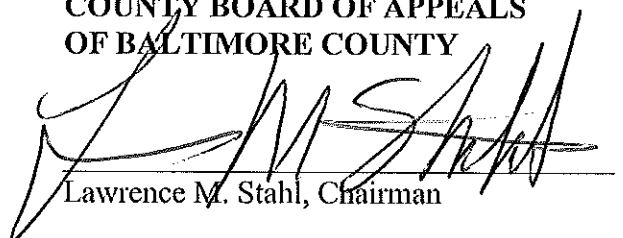
This matter having come before this Board on appeal dated March 29, 2000 from a decision of the Zoning Commissioner dated February 28, 2000 in which the requested special exception and variance relief was granted in part and denied in part;

WHEREAS, by letter dated January 6, 2003, the Board of Appeals notified the parties of record that the above-entitled matter would be dismissed for lack of prosecution after a period of 30 days; and

WHEREAS, the Board has received no response to said letter of January 6, 2003;

IT IS HEREBY ORDERED this 3rd day of March, 2003 by the County Board of Appeals of Baltimore County that the above-referenced Petition for Special Hearing filed in Case 00-259-XA be and the same is hereby **DISMISSED FOR LACK OF PROSECUTION**, and that any and all relief granted therein is rendered **null and void**.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence M. Stahl, Chairman

Sophie

IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
AND VARIANCE – W/S Falls Road, *
470' N of the c/l Hollins Lane * ZONING COMMISSIONER
(6132 Falls Road) *
3rd Election District * OF BALTIMORE COUNTY
2nd Councilmanic District *
Case No. 00-259-XA
Robert F. Adsit & Mario Vitale, Owners; *
Harbor Management Services, Contr.Pur. *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by the owners of the subject property, Robert F. Adsit and Mario Vitale, and the Contract Purchasers, Harbor Management Services, through their attorney, Benjamin Bronstein, Esquire. The Petitioners request a special exception to allow an assisted living facility in a residential zone, and a modification or waiver of Residential Transition Area (RTA) requirements. In addition, the Petitioners request variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: From Section 1B02.2.A to permit a building height of 65 feet in lieu of the maximum allowed 50 feet; from Section 1B01.1.B.1.C(1)&(2) and from Section 1B01.1.B.e(5) to permit RTA buffers of as little as 0 feet in certain areas of the proposed parking area in lieu of the required 50 feet, and RTA setbacks of 35 feet in lieu of the required 75 feet. The subject property and relief sought are more particularly described on the site plan submitted into evidence and marked as Petitioner's Exhibit 1, the schematic landscape plan submitted into evidence as Petitioner's Exhibit 2, and the schematic building elevation drawing marked into evidence as Petitioner's Exhibit 4.

Appearing at the requisite public hearing held in support of the requests were Robert F. Adsit and Mario Vitale, property owners, and their Counsel, Phyllis Friedman, Esquire; however, Ms. Friedman did not actively participate in the proceedings. Also appearing on behalf of the request was the Contract Purchaser of the subject site, Harbor Management Services, through Ron

Schafer, a principle in the firm. Mr. Schafer's company is under contract to purchase the property and develop same with an assisted living facility. Harbor Management Services was represented by Benjamin Bronstein, Esquire. In addition, Frederick Thompson, Professional Engineer who prepared the site plan for this property, appeared, as did Douglas Cohen, the Architect who prepared the building elevation drawings for this project, and Wes Guckert, a Traffic Engineering expert. Numerous residents from the surrounding community appeared in opposition to the request. The Protestants were not represented by Counsel; however, Sarah Lord, Charles B. Boswell, and Edward Hord served as spokespersons for this group. The list of those attending is reflected on the sign in sheets which were circulated at the hearing.

An examination of the site plan discloses that the subject property is roughly triangular in shape, approximately 8.39 acres in area, zoned D.R.3.5. The property is located immediately adjacent to Falls Road (Maryland Route 25), not far from Lake Roland and the Robert E. Lee Park in Ruxton, just a short distance from the Baltimore County/Baltimore City Line. Presently, the property is improved with a two-story frame dwelling, which is unoccupied, and a series of out-buildings. But for these structures, the vast majority of the property is unimproved.

The property contains significant natural features which dictate the type and scope of development which is practical on this lot. These natural features include a series of steep slopes throughout the property, and a stream which traverses along the south side of the property in an area of scrub forest. The area at large is somewhat unique and was described in detail through the testimony offered by Ms. Lord and through a series of photographs that she presented. The site is located within the Jones Falls Watershed and much of the surrounding locale features older buildings on steeply sloped lots. Other significant features of the area include the existence of a number of designated historic buildings. During her testimony, Ms. Lord also described the history of this community and its development. Finally, the zoning of the area is varied. Most of the vicinity is zoned residentially; however, there are pockets of commercial development nearby, including a professional building located immediately across Falls Road from the subject property.

Turning to the subject proposal, Mr. Schafer, on behalf of Harbor Management Services, described the proposed development of the site. The existing improvements on the property will be razed and a building reaching four stories in height is proposed. This building will be utilized as an assisted living facility containing 113 beds within 98 units. As part of the 113 beds provided, there will be a wing of 24 beds for early stage Alzheimer patients. In addition to the rooms for housing the elderly, the structure will also contain numerous amenities, including a large dining area, social areas, exercise room, and similar facilities. Harbor Management Services will operate the facility with 57 full-time employee positions, spread over three shifts (7AM-3PM, 3PM-11PM, and 11PM-7AM).

Mr. Cohen testified extensively about the design of the proposed building. His efforts to design a building for this property have been challenged by the topography of the site. As noted above, the property is significantly sloped. Although a portion of the structure will contain four stories, the building is laid out in such a manner so that a part features but a single story and other wings, two or three stories. An architectural rendering of the proposed structure was presented as Petitioner's Exhibit 4. Mr. Cohen described in detail the methodology he employed to develop his design and also indicated that the structure would be built into the grade to reduce its apparent height. The building will also contain a pitched roof and other architectural features to retain a residential character.

Also testifying on behalf of the Petitioner was Wes Guckert, a traffic expert. Mr. Guckert described his traffic studies for this project and opined that the use would not present any adverse traffic impacts to the surrounding locale. It is to be noted that as part of the project, Falls Road will be widened with the construction of an acceleration/deceleration lane along the frontage of this property. Mr. Guckert concluded that there was sufficient sight distance for those individuals entering and exiting the property along Falls Road and that the volume of traffic to be generated would be insufficient to present an adverse impact on the surrounding locale.

Also testifying on behalf of the Petitioner was Frederick Thompson, the project engineer. Mr. Thompson discussed many of the numerous site constraints and the development of

the overall plan. He also discussed the RTA variances that have been requested. He opined that the proposed use of the property for an assisted living facility would not be detrimental to the health, safety and general welfare of the community and was appropriate for this property and neighborhood.

A number of individuals testified in opposition to the request. Generally speaking, it appears that the neighbors do not oppose the use, per se; however, they object to the size of the building. Two neighbors, Isao Oishi and Natalie Bunday, reside immediately adjacent to the property. They both expressed concerns over the mass and height of the proposed building. They believe that the building will overwhelm their properties and its size should be reduced.

Turning first to the Petition for Special Exception, an assisted living facility is permitted in the D.R.3.5 zone, only by special exception. As has been repeatedly stated in previous opinions issued by this Office, the use of the words "special exception" to describe this zoning tool can be misleading. In other jurisdictions, special exception uses (as they are known in Baltimore County) are known as conditional uses. The Appellate Courts of this state have emphasized the presumptive permissibility of special exception/conditional uses. Special exceptions have been considered by the higher Courts as part of a comprehensive zoning scheme, sharing a presumption that they are in the interest of the general welfare and are, therefore, valid. See People's Counsel v. Mangione, 85 Md. App. 738 (1991).

In adjudging the merits of the proposed special exception, I am required to apply the criteria set out in Section 502.1 of the B.C.Z.R. Essentially, those criteria list certain factors which are to be applied to determine if the proposed use would be detrimental to the health, safety and general welfare of the locale. It is also to be noted that inherent impacts of the proposed special exception use are not to be considered. As stated by the Court of Special Appeals in Mossberg v. Montgomery County, 107 Md. App. 1 (1995), "The question in the case sub judice, therefore, is not whether a (special exception use) has adverse effects. It inherently has them. The question is also not whether the (special exception use) at issue here will have adverse effects at this proposed location. Certainly it will and those adverse effects are contemplated by the statute. The proper

question is whether those adverse effects are above and beyond (i.e., greater) here than they would generally be elsewhere within the areas of the County where they may be established..." emphasis in original, Page 9. In applying that standard to the instant case, it is obvious that the proposed assisted living facility will have impacts on the surrounding locale. The test to be applied is whether those adverse impacts are particularly egregious here, to the extent that they warrant a denial of the request.

Based upon the testimony and evidence offered, I am easily persuaded that the Petition for Special Exception should be granted. The overwhelming weight of the testimony and evidence offered supports the conclusion that an assisted living facility at this location is appropriate. The property abuts a major road (Falls Road, Maryland Route 25) and is not nestled within a strictly residential community. Although there are indeed dwellings nearby, there are also commercial uses in the vicinity and I do not find that the proposed use is inconsistent with the character of the neighborhood. Thus, the Petition for Special Exception shall be granted.

The second issue presented within the Petition for Special Exception relates to Residential Transition Area (RTA) requirements. As set out in Section 1B01.1.B of the B.C.Z.R., the RTA is a 100-foot area, including any public road or public right-of-way, which extends from a D.R. zone tract boundary into the site to be developed. Further, the regulations note that the purpose of a RTA is to assure that similar housing types are built adjacent to one another, or that adequate buffers or screening is provided between dissimilar housing types.

There are actually three RTA dimensions which must be considered in any given project. The first is a 50-foot buffer extending from the property line into the given site. Within this 50-foot buffer, there shall be no grading or clearing and that area should remain landscaped. The second dimension to be considered is a 75-foot setback. This setback includes the 50-foot buffer, plus an additional 25 feet. Within that 75-foot setback, there can be no parking lots or structures. The third RTA dimension measures 100 feet. This includes the 50-foot RTA buffer, plus an additional 50 feet. Within this 100-foot dimension, there can be no building greater than

35 feet in height. Additionally, these requirements may be variances, pursuant to Section 1B01.1.B(c) of the B.C.Z.R., or modified or waived, pursuant to Section 432.4 of the B.C.Z.R.

Testimony and evidence presented indicated that there is no RTA generated from the south and west sides of the subject site. As shown on the site plan, the RTA generated in this case is from the north (the Pleasantview community) and from the east (across Falls Road). From the north, there is no RTA variance or special exception relief sought. As shown on the site plan, the 50-foot RTA buffer extending into the property from the north will not be graded or cleared and will remain landscaped. Additionally, there is no parking lot or building within the 75-foot setback. Finally, no part of the building is within 100 feet of the property line; thus, the height limitation is inapplicable. It is significant that there is no RTA relief requested that would impact the homes in the Pleasantview community.

RTA relief is necessary, however, from the east across Falls Road. Mr. Thompson indicated that there would be grading to accommodate the widening of Falls Road within the 50-foot RTA buffer. Additionally, the parking lot, driveway, and storm water management facility will be within the 75-foot setback area. The proposed building itself, however, will not be in the RTA setback.

In considering the testimony and evidence offered, I am persuaded to grant the relief requested. In my judgment, relief should be approved, pursuant to Section 432.4 of the B.C.Z.R. Specifically, I find that compliance with the RTA requirements, as they would be applicable in this case and generated from the residential properties across Falls Road, would cause an unreasonable hardship on the development. Additionally, I am persuaded that the site design and amenities proposed will justify a modification of the RTA restrictions. Lastly, for reasons set out above, the proposed development will not be detrimental to the use, peaceful enjoyment, economic value or development of the surrounding properties in the general neighborhood. Thus, I will permit a modification of the RTA requirements in the manner shown on the plan, as it relates to improvements along the east side of the property adjacent to Falls Road. Having granted the relief

pursuant to Section 432.4 of the B.C.Z.R., the request for variance from the RTA requirements is moot.

The final issue relates to the proposed height of the building. As shown on the plan and elevation drawings, the maximum building height (measured at the roof peak) will be 65 feet in lieu of the permitted 50 feet. Messrs. Cohen and Thompson testified about this issue and presented the Developer's justification for a variance from this requirement. They noted in particular the Developer's desire to construct a peaked roof on the building to maintain a residential character of the structure and the difficulties of building on this site due to the steep slopes and grade. They also cited the other natural features of the property as justification.

A variance from the zoning regulations can be granted only in accordance with the requirements of Section 307 of the B.C.Z.R. Those requirements have been considered by the Appellate Courts of this State, most notably in Cromwell v. Ward, 102 Md. App. 691 (1995). Interestingly, the appellate decision in Cromwell v. Ward came to the Court of Special Appeals in an appeal of a variance requested in Baltimore County for relief from the height limitation requirement. Essentially, in order for variance relief to be granted, the Cromwell court requires that the Petitioner demonstrate that the property is unique, that its uniqueness generates a practical difficulty, which would result if strict adherence to the regulation were required, and a finding that relief can be granted without adverse impact to adjacent properties.

In this case, I am not persuaded that the Petitioner has met its burden. I find that a variance from the height limitation to the extent requested is excessive. The objections raised by the community that the size, mass, and particularly, the height of this building would overwhelm adjacent properties, has merit. For these reasons, I will deny the Petition for Variance as filed, as to the height of the proposed building. However, in denying the variance, the following comment need be offered.

A Zoning Advisory Committee (ZAC) comment submitted by the Office of Planning suggested that the subject proposal be reviewed by County agencies through the full development process, as codified in Title 26 of the Baltimore County Code. In this regard, the Developer

indicated at the hearing that the matter would undergo that process and in fact, that a concept plan has been submitted. Thus, this proposal will continue to be reviewed by the County through the development review process.

In that the development review process will culminate in a hearing before the Zoning Commissioner's Office, it is appropriate for this Hearing Officer to reserve until that time on the imposition of any specific restrictions or limitations on the proposed use. However, the Developer is encouraged to utilize this process to redevelop its plan with an eye towards resolving the issues generated at the hearing on the instant Petitions. The density, or number of residents, is not problematic. The acreage of the site and zoning of the property would allow up to 124 units and fewer are being requested. However, the height of the building, coupled with its mass, and given the property's topography, need be re-evaluated. Although this Zoning Commissioner might consider a more modest height variance, the 65-foot height proposed (a variance of 30% of the maximum allowed) is excessive. Additionally, the Petitioner shall be required to retain the residential character of the building. That is, the pitched roof should not be abandoned in order to satisfy the height requirements. The Petitioner will either have to eliminate a portion of the building, or find another architecturally appropriate alternate to achieve its desired result. It is recommended that this Developer redesign its building to either eliminate or reduce the requested height variance, as part of the development review process.

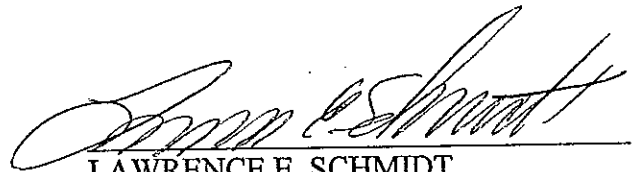
Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth herein, the Petition for Special Exception shall be granted, and the Petition for Variance granted in part, and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of February, 2000 that the Petition for Special Exception to allow an assisted living facility in a residential zone, and a modification of Residential Transition Area (RTA) requirements as outlined above, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The Petitioners shall submit this proposal for review through the Development Review Process, as codified in Title 26 of the Baltimore County Code, including a Hearing Officer's Hearing, at which time the imposition of restrictions will be reconsidered.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 1B01.1.B.1.C(1)&(2) and 1B01.1.B.E(5) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit RTA buffers of as little as 0 feet in certain areas of the proposed parking area in lieu of the required 50 feet, and RTA setbacks of 35 feet in lieu of the required 75 feet, be and is hereby DISMISSED AS MOOT; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1B02.2.A of the B.C.Z.R. to permit a building height of 65 feet in lieu of the maximum allowed 50 feet, be and is hereby DENIED.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs