

**Tax Map/Block/Parcel
No. 74-2-5**

Case 5669

**OFFICIAL DECISION
BOARD OF ZONING APPEALS**

CARROLL COUNTY, MARYLAND

APPELLANT: Silverman Companies,LLC.
c/o Marc Silverman
1431 Longhill Drive
Rockville, Maryland 20854

ATTORNEY: John Maguire

PROTESTANT: James Arnold

ATTORNEY: David K. Bowersox

REQUEST: Request for a conditional use for retirement homes, assisted living facilities not to exceed 190 units and a variance from the required parking spaces of 180 spaces to 120 spaces.

LOCATION: The site is located at 5825 Oklahoma Road, Eldersburg, MD 21784, on property zoned “R-20,000” Residential District & “C” Conservation District in Election District 5.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-79 (C) and 223-186 (A) (2), 103-24, 223-186 (A) (3)

HEARING HELD: December 10, 2012

FINDINGS AND CONCLUSION

On December 10, 2012, the Board of Zoning Appeals (the Board) convened to hear the request for a conditional use for retirement homes, assisted living facilities not to exceed 190 units (modified to 178 units in the Board decision in case 5668) and a variance from the required parking spaces of 180 spaces to 120 spaces. Based on the testimony and evidence presented, the Board made the following findings and conclusions. Both Mr. Bowersox and Mr. Maguire agreed that they had no new evidence to bring before the Board. The entire record of Case 5668 was incorporated into this case.

ISSUE

The issue is whether the granting of the conditional use was proper in this case?

SUMMARY OF EVIDENCE FROM CASE 5668

A. Exhibits

The Adams Paradise file maintained by the Bureau of Development Review was accepted into evidence by the Board.

The Board accepted its file in case 5668 into the record.

The Board accepted into evidence a one sheet document entitled Density Possibilities.

The Board accepted into evidence approximately one hundred e-mail communications and letters to it for this case from September 11, 2012 to November 30, 2012.

The following exhibits were admitted into evidence on behalf of the Appellant:

1. A resume of Martin W. Hackett, president of CLSI.
2. A concept site plan (small version).
3. A multiple page concept site plan (large version).
4. A photo of a view from the street for graphic purposes.
5. Bulk Requirements in zoning law.
6. A drawing of residential for comparison on property.
7. A July 2, 2012 letter from Jason L. Flemming.
8. A deed to Frank W. Adams and Aleta Adams.
9. A resume of Edmund R. Cueman.
10. The 2001 Freedom Community Comprehensive Plan approved on August 14, 2001, including a separate map.
11. A package from the 2001 Freedom Community Comprehensive Plan.
12. A master plan package.
13. Minutes from a December 8, 1970 Planning & Zoning Commission meeting.
14. A two page opinion by Edmund R. Cueman.
15. A map of the priority funding area.
16. A resume of Michael M. Lenhart of Lenhart Traffic Consulting, Inc.
17. A Traffic Impact Analysis prepared by Lenhart Traffic Consulting, Inc.
18. Updated Trip Generation for Site.
19. A resume of Joseph M. Cronyn.
20. Package of impact on nearby property values.
21. A Demographic and socio-economic Outlook sheet.
22. Adams Paradise Density.
23. Adams Paradise – Density Comparisons of other approved retirement projects.
24. A mailing list of citizens.
25. An aerial photograph.

The following exhibits were admitted into evidence on behalf of the Protestants:

1. Code provisions regarding principal permitted uses, conditional uses, and bulk requirements.
2. Article 7 – “R-20,000” Residence District.
3. Ordinance No. 01-6.
4. Ordinance No. 06-07.
5. Carroll County Code R-20,000 Residence District.
6. Thumb Drive of photos.
7. Maximum density allowed under code and total units constructed.
8. Minutes of a portion of July 17, 2012 Planning & Zoning Commission Meeting.
9. A resume of David Straitman.
10. An Evaluation/Impact study of real property.
11. Additional Paired Sales/ Winifred Manor.
12. An email from Mr. and Mrs. McCubbin.
13. A letter from Jan Stephen Carter.
14. A letter from Ralph Robosson.

B. Testimony

The following witnesses presented testimony on behalf of the appellant: Martin W. Hackett, Arla Ely, Edmund R. Cueman, Michael M. Lenhart, Joseph M. Cronyn, and Marc Silverman.

The following witnesses presented testimony on behalf of the Protestants: John Gallegher, Stephen Prior, Curtis Milton, Terry Collins, Jeff Sturgess, Doug Galligher, Mary Louise Carter, David Straitman, George McCubbin, Jan Stephen Carter, Ralph Robosson, Vincent “Bill” Sensel, Don Wooden, Carol Gauthier, and Thomas Brown.

Martin W. Hackett testified that his company prepared appellant’s exhibit 2, 3, and 4. He was qualified as an expert witness in land use, land planning and zoning. He testified that the project had county approval from all of the agencies that reviewed it. He stated that the South Carroll Senior Center was located just .6 miles away from the site. He further testified that the site was an appropriate use of the land and was consistent with the comprehensive plan.

Arla Ely lives next to the property in question. Previously the property belonged to her parents. She was pleased with the proposed development of the land for assisted living and independent living.

Edmund R. Cueman was accepted as an expert witness in land use and master planning. He was the former Carroll County Planning Director from 1971 to 1995. Mr. Cueman went through items in the Comprehensive Plan that would allow the proposed assisted living and independent living site. He stated that the Comprehensive Plan envisioned the need to provide appropriate housing for the aging population. He also noted that the project was consistent with the county master plan. He mentioned that the provisions pertaining to nursing homes in the

zoning ordinance dated back to 1970 when he was a director. He stated that the two units per acre set forth by the Planning Commission could not reasonably be applied to such non-single family uses like retirement homes, assisted living facilities, continuing care communities, and nursing homes. These uses were recognized and referenced throughout the Comprehensive Plan as necessary uses. In his opinion the R-20,000 Residence District zoning was consistent with the Comprehensive Plan, because the Plan specifically calls for the application of this prescribed zoning with the allowable uses and applicable density standards as set forth in the R-20,000 Residence District of the Code. He believed that the project was consistent with the land and development patterns in the area and the Comprehensive Plan. He explained that it would make no sense to apply single family home density to retirement housing. Indeed, he added that he was “shocked” that the Planning Commission could limit the project to two units per acre. He also opined that another objective of the Comprehensive Plan was to cluster this type of higher density use in the public water and sewer service areas which serves the greater objective of conserving land, open space and resources in other areas.

Michael M. Lenhart testified as an expert witness in traffic engineering. He was retained to provide a traffic impact study for the concept plan. His study assumed that the project would have 235 beds and units. The traffic to and from the site would be about twenty percent lower with the proposed 190 beds and units. Mr. Lenhart stated that the proposed site would satisfy the Carroll County Public Facilities requirements, and all of the local intersections will operate at very good levels of service. Furthermore, he noted that the development of this project will have a negligible effect on the levels of service and will not be detrimental to the health, safety, and welfare of the community and adjoining road network.

Joseph M. Cronyn was accepted by the Board as an expert in real estate, appraising, marketing and valuations. He stated that the project that would not negatively affect property values. He found that the proposed use was compatible with the neighborhood. He opined that the spacious layout, buffering and attractive appearance of the facility would have a benign effect on the neighborhood. He reached the conclusion that senior living facilities do not negatively affect the value of neighboring properties.

Marc Silverman stated that he was a real estate broker and a real estate developer. He was the real estate developer responsible for the Frocks Sunnybrook Farms senior housing project in Westminster, Maryland. He wanted the Oklahoma Road project to be a similar project for seniors. The site is only .6 miles away from the South Carroll Senior Center. He saw no adverse effects to having seniors as neighbors. He also noted that seniors were a vital part of the community. It was important to allow seniors to remain in the area in which they lived. The concept plan received all the necessary approvals from county reviewers. He testified that the variance for parking spaces was based on his experience that many of the parking spaces would be underutilized and that not constructing the parking spaces would mean that less of nature would need to be destroyed.

All of the neighbors with the exception of Arla Ely testified against the project. The e-mails, letters and testimony had similar themes. The main theme was that the density of the

project was too high. The objectors argued that the area was residential and a three story building was out of character for the neighborhood. Other concerns were that Oklahoma Road was not safe and could not be widened. The additional traffic from shift changes, CATS buses, emergency vehicles was also thought to be an issue. People believed that the project was a commercial facility being proposed in a residential area. People believed that the project would ruin the rural character of the area. People claimed that property values would decrease due to the project. The lighting for the parking lots and the building was addressed as a problem. One person claimed that there was too many parking spaces.

Philip R. Hager, Director of Land Use, Planning and Development, and Secretary to the Planning Commission testified on behalf of the Planning Commission. He has been in his current position since February 2012. He stated that not all R-20,000 properties were the same. He believed that the Planning Commission's review of this matter was intense, thorough and extensive. He thought that the distinctive features of the property meant that density had to be reduced. He stated that the Planning Commission tried to do its job with an unyielding applicant. The denial of the concept plan was a part of frustration with the applicant by the Planning Commission. The Planning Commission tried to come up with a reasonable number for density based on the facts. He admitted that the testimony of the public was given great weight by the Planning Commission. The proposed structure was of a significant size when most of the other structures in the area were single family homes. He testified that the proposed project was not consistent with the master plan. Although it was possible that an R-20,000 Residential District could have such a project, he did not know where such a project could be accomplished in the county. Much of his testimony dealt with the area being designated as medium density. However, he admitted that the plan was silent on the appropriate uses for medium density. The Planning Commission clearly believed that the maximum density of 3000 square feet per unit was too much. He also stated that the Planning Commission did not make a finding that two units per acre would be appropriate.

Protestant Exhibit 7 was entered into evidence through Mr. Hager. He stated that the density for assisted living units ranged from five units per acre to fourteen units per acre. The Planning Commission did not have the benefit of considering Protestant Exhibit 7. He also characterized the project as a "monolithic single structure."

Clayton Black, Bureau Chief testified that he had worked for the county for twenty-five years. He presented the Planning Commission with a different density analysis through another part of the County Code. He stated that he provided the calculation of density to the Planning Commission under the Adequate Public Facilities and Concurrency Management requirements in Chapter 71 of the Carroll County Code. The density under the Concurrency Management would have been 129 units. The 90 units would be equivalent to 29 units. The 100 independent living units would be equal to 100 units. The total of 129 units came from the addition of the 29 units with the 100 units. The project met all of the requirements for Concurrency Management. Under the Concurrency Management plan the 190 units requested by the project had a density of 129 single family dwelling units. To put it another way Mr. Black was clear that the 190 units requested in this calculation had a density of 129 single family dwelling units. He noted that the

concept plan was approved by various county reviewers. He stated that in his time with the county that the Planning Commission has not denied a concept plan.

David Straitman testified on behalf of the Protestants. He was accepted as an appraisal expert. His assignment was to evaluate the proposed project and to determine the impact it would have on neighboring properties. He stated that the floor area ratio exceeded most other assisted living facilities in the area. The floor area ratio is generally used for commercial properties, but from a lender standpoint the proposed project would probably be qualified as a commercial property. He agreed with Mr. Cronyn that the site had a semi rural feel to it. He mentioned that the medium density area was a transitional density. The proposed site was near the edge of the R-20,000 Residential District and near the R-40,000 Residential District. He also testified about the paired sales analysis. His opinion was that the proposed site had a negative impact on neighboring properties. He found that the difference in price with the proposed site would be -\$60,000 to neighboring properties. If the project was smaller, then it would have less of an impact on neighboring properties.

The evidence from Case 5669 came in the form of two witnesses: Philip R. Hager and Stephen Prior. Mr. Hager testified as a member of the Planning Commission. He wanted to provide additional testimony since the Board had approved the concept plan on the last hearing date. He questioned whether a density of 178 was the correct number and asked the Board to consider whether a number less than 178 was a more appropriate number. He wanted the Board to consider whether the project was really an apartment complex or an assisted living facility. A few people mentioned apartments in their testimony, and the Code would not allow for an apartment building on the property. The Planning Commission was concerned that the project may be converted into an apartment complex in the future. He had a concern that measures needed to be taken to ensure that the facility would continue to remain a retirement community. He brought up the Terrapin Run case and its development following the decision. He wanted to alert the Board to consequences before it jumped off a cliff. He believed that the county either needed to change the comprehensive plans or change the code. He reiterated that the Planning Commission was frustrated by the applicant. He noted that the county commissioners wanted to keep the fabric of the community the same. He also mentioned that the density number of 178 was not considered by the Planning Commission.

He did not want the county to be responsible for a demolition of the facility at some point in the future. He recommended that a surety be used in this case. He was confident that the project would survive in the future. However, if the applicant ceased to use the property as planned, it would be demolished at the applicant's costs. The county would not be expected to pay the demolition costs. He mentioned that the Planning Commission routinely used bonds for stormwater management and landscaping.

Stephen Prior testified that the project was not consistent with the master plan. A high density development was going into an area designated as medium density. The proposed use was not consistent with the surrounding neighborhood. It would be better if the project was located closer to Maryland Route 26 as opposed to on Oklahoma Road.

FINDINGS OF FACT

The Planning Commission had three meetings about the proposed site. The first public meeting was on March 27, 2012 with the Technical Review Committee. The second meeting was on April 17, 2012, and the third meeting was on July 17, 2012. The minutes of each meeting is included in the record of this case. The concept plan offered at the first meeting had the construction of two buildings and included 100 assisted living/alzheimer's units and 135 independent living units. The property is zoned in the R-20,000 Residential District for 14.27 acres and Conservation District for 2.03 acres for a total of 16.3 acres. Public water and sewer connections are available at the site. The newly constructed South Carroll Senior Center is .6 acres away from the site. The master plan designates that the area is medium density residential. The revised concept plan took into consideration comments from the April 17, 2012 meeting. The revised concept plan reduced the number of units from 235 to 190. The two building concept was decreased to one three story building. The one building would be set back substantially further from the road. The building was also lowered considerably from the earliest concept plan to reduce visibility from off-site even more. As a number of witnesses testified and it is reflected in the July 17, 2012 minutes of the Planning Commission, a number of county agencies approved the revised site plan: Design and Architectural Review Committee did review the revised concept plan building elevations and had no objections to the appearance at page 3; the floodplain management approval of the concept plan was granted at page 4; the plan meets the requirements for forest conservation concept submittals at page 4; the Bureau of Resource Management has granted concept stormwater management approval at page 4; the facilities and services that will be tested are considered adequate at page 4; and a traffic impact study was reviewed and approved by County staff at page 8. In addition, there were no issues with water and sewer as this project was just added to the priority service area in the latest Water and Sewer Master Plan. The County approved the plan at page 10 of the April 17, 2012 minutes. There was no evidence that a required agency approval was not made for the project.

The Planning Commission considered a number of densities in this matter. These considerations are included in Protestant Exhibit 8. The minutes reflect that the Planning Commission discussed the proposed density and alternative densities. It considered a density of 27 four bedroom houses which would give a density of 108 people. Mr. Black mentioned the 129 equivalent dwelling units under the Concurrency Management ordinance. Another consideration was 162 units based on 27 homes times 54 in-law suites. Mr. Black explained to the Planning Commission that the County Attorney's Office made findings that the density should be no greater than two units per acre. The Planning Commission realized that at the high end the density could be 9.49 and at the low end 2 units per acre. The Planning Commission unanimously agreed that the maximum end for density at the site was inappropriate. Therefore, the Planning Commission unanimously denied the concept plan when requested to make an up or down vote on the revised concept plan.

Was the granting of the conditional use proper? The Code of Public Local Laws and Ordinances, Chapter 223-79 (C) states that conditional uses requiring Board authorization includes "nursing homes, retirement homes, continuing care retirement communities and

assisted-living facilities...” The County Code goes on to provide the “limitations, guides and standards” that are to be used by the Board when considering an application for a conditional use:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a conditional use may be issued, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted. The application for a conditional use shall not be approved where the Board finds the proposed use would adversely affect the public health, safety, security, morals, or general welfare, would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall give consideration, among other things, to the following:

- A. The number of people residing or working in the immediate area concerned.
- B. The orderly growth of a community.
- C. Traffic conditions and facilities.
- D. The effect of the proposed use upon the peaceful enjoyment of people in their homes.
- E. The conservation of property values.
- F. The effect of odors, dust, gas, smoke, fumes, vibrations, glare, and noise upon the use of surrounding property values.
- G. The most appropriate use of land and structures.
- H. The purpose of this chapter as set forth herein.
- I. Type and kind of structures in the vicinity where public gatherings may be held, such as schools, religious establishments, and the like.
- J. Compatibility.
- K. Public convenience and necessity.

The seminal case of *Schultz v. Pritts*, 291 Md. 1 (1981) controls this issue. In *Schultz*, the Court of Appeals explained that when the beneficial purposes of a use outweigh possible adverse effects, such uses are permitted. *Id.* at 35-36. Conversely, when the beneficial purposes do not outweigh the adverse effects, such uses are conditional. As such, the Court of Appeals stated that “a permitted use may be developed even though it has an adverse effect upon traffic in the particular location proposed. The Court of Appeals held that the proper standard to apply when analyzing a conditional use is “whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use.” *Id.* at 37.

The local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense that certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located. *People's Counsel for Balt. County v. Loyola College in Md.*, 406 Md. 54, 94-95 (2008). In that sense, the local legislature puts on its "Sorting Hat" and separates permitted

uses, special exceptions, and all other uses. That is why the uses are designated special exception uses, not permitted uses. The inherent effects notwithstanding, the legislative determination necessarily is that the uses conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur.

The Board considered each of the factors set forth above in §223-191 of the Zoning Code and the *Schultz v. Pritts* test in granting the conditional use.

A. The number of people residing or working in the immediate area concerned.

The Board was well aware that the project was in the R-20,000 Residential District. Most of the structures around the proposed site were residential homes. However, the Board was aware that a school was nearby and a Senior Center was .6 miles away from the site. The Board considered the permitted uses for the zone.

B. The orderly growth of a community.

The Carroll County Code anticipated that assisted living facilities and retirement communities would be needed in the R-20,000 Residential District. There was evidence about the need for retirement communities in the county. There was evidence about the ages of people in the area that would be of age to benefit from the proposed site. The use was consistent with the master plan and the comprehensive plan. Mr. Cueman explained that by making an express reference to the R-20,000 Residential District when describing medium density residential areas the Freedom Community Comprehensive Plan incorporated the details already spelled out in 223-29(C) and 82(B) of the Cod, including retirement homes, assisted living facilities and the associated bulk and density standards. He further explained that it would make no sense to apply single family home density to retirement housing. One objective of the Comprehensive Plan was to cluster this type of higher density use in the public water and sewer service areas which serves the greater objective of conserving land, open space and resources in other areas. Public water and sewer connections are available at the site. Mr. Cronyn found that the proposed use was compatible with the neighborhood. He opined that the spacious layout, buffering and attractive appearance of the facility would have a relatively benign effect on the neighborhood.

C. Traffic conditions and facilities.

Traffic conditions were addressed with the engineer that conducted the study. Michael M. Lenhart testified as an expert witness in traffic engineering. He was retained to provide a traffic impact study for the concept plan. His study assumed that the project would have 235 beds and units. The traffic to and from the site would be about twenty percent lower with the proposed 190 beds and units. Mr. Lenhart stated that the proposed site would satisfy the Carroll County Public Facilities requirements, and all of the study intersections will operate at very good levels of service. Furthermore, he noted that the development of this project will have a negligible effect on the levels of service and will not be detrimental to the health, safety, and

welfare of the community and adjoining road network. No county officials seemed to have any serious traffic concerns. In fact, the Planning Commission deleted traffic concerns as a reason for denying the concept plan when the motion to consider it was made.

D. The effect of the proposed use upon the peaceful enjoyment of people in their homes.

There was evidence about how the facility would impact the community. The buffering and spacing in this project would help people enjoy their own homes. There would be a building setback of more than three hundred feet, and therefore, a building setback from the nearest houses of the adjoining property owners across Oklahoma Road of about 37-390 feet. There would be about 3.7 acres of open space between the applicant's building and Oklahoma Road. The assisted living/alzheimer's units would have less of an impact on the community because those individuals would not be driving themselves in and out of the facility. The staff working at the facility and visitors was already considered in the traffic impact study. People living at the facility would probably not have the need for two cars to be in use daily as would be the case for a typical four person family with two adults and two children. The traffic created by the facility would probably not occur during the peak periods of traffic, because seniors generally try to avoid driving during those times. Seniors would not be out late at night and would not be making a lot of noises. The lighting used at the site would be the required lighting for the building and the parking lot. Therefore, the lighting would not be much of an eyesore. The landscape screening would eventually help with the neighbors' view of the property even though the screening would not be fully grown when planted.

E. The conservation of property values.

Through the evidence there was a major difference of opinion about what could happen to the property values if the proposed site was constructed. Mr. Straitman testified that his opinion was that the proposed site had a negative impact on neighboring properties. He found that the difference in price with the proposed site would be -\$60,000 to neighboring properties. Mr. Cronyn reached the conclusion that senior living facilities did not negatively affect the value of neighboring properties. The Board accepted Mr. Cueman's testimony with regard to density and that such a site was permitted by both the master plan and the comprehensive plan. The Board did not find that property values would decrease if the revised concept plan was followed. The decrease in neighboring property values of \$60,000, as opined by Mr. Straitman, was rejected.

F. The effect of odors, dust, gas, smoke, fumes, vibrations, glare, and noise upon the use of surrounding property values.

Odors, dust, gas, smoke, fumes, vibrations, glare, and noise was considered but not thought to be an issue in the case. Mr. Hackett and Mr. Silverman testified that the use does not produce odors, dust, gas, smoke, fumes, vibrations or unusual glare or noise. A photometric lighting plan is contained in the record as part of the Bureau of Development Review file. It indicates virtually no migration of light beyond the property boundaries. Mr. Hackett testified that there

would be a routine adjustment to the lighting plan to eliminate whatever minimal light migration was shown on the concept lighting plan at the final site plan stage. Mr. Hackett further testified that the lighting plan would be subject to further Planning Commission review at the final plan stage.

G. The most appropriate use of land and structures.

The Board considered the most appropriate use of the land. The land does not provide many options for development. The topography includes a steep incline. The Board had the benefit of comparing 27 equivalent single dwelling units in the same space. With the revised concept plan changing the layout from two buildings to one building meant that less of the land would be needed for building structures. Therefore, more of the land would be left in its natural state. The project would provide for large setbacks, large blocks of open space and preserved forested areas for natural screenings.

H. The purpose of this chapter as set forth herein.

The purpose of this chapter is to allow property owners to use their property as they saw fit as long as it also fit in the legislative scheme of things. (See 223-1 of Zoning Code.) Nursing homes, retirement homes, continuing care retirement communities and assisted-living facilities were permitted in the R-20,000 Residential District. The Board also found that the legislative scheme allowed nursing homes, retirement homes, continuing care retirement communities and assisted-living facilities to be located in residential districts. The subject proposal integrates the need for elderly and assisted living use with the express objective in the Code to locate such uses in the R-20,000 Residential District.

I. Type and kind of structures in the vicinity where public gatherings may be held, such as schools, religious establishments, and the like.

The Board heard evidence that the facility was just .6 miles away from a senior center. The Board found that the proposed use was complimentary to the newly constructed senior center. The Board also found that the legislative scheme allowed nursing homes, retirement homes, continuing care retirement communities and assisted-living facilities to be located in residential districts in general and the R-20,000 Residential District in particular.

J. Compatibility.

Compatibility is presumed under *Schultz v. Pritts* absent a showing of adverse impacts at this location above and beyond those at other locations in the R-20,000 Residential District. Mr. Cronyn found that the proposed use was compatible with the neighborhood. He opined that the spacious layout, buffering and attractive appearance of the facility would have a relatively benign effect on the neighborhood. The Board reduced the density such that the maximum possible number of units would not be created.

K. Public convenience and necessity.

As to public convenience and necessity the Board considered the need for assisted living/Alzheimer's units and independent living units. There was evidence that the site was served by an existing road. Public water and sewer connections are available at the site. The Carroll Area Transit (public transportation) vehicles would serve the site. The site was in close proximity to the senior center. The people at the site would have access to people they knew who used the senior center and senior center participants would have access to people who visited from the site. There was testimony that the market area was made up of a rapidly aging population. As a result, the public necessity for a variety of elderly housing was more evident in 2012 than in 1971 when the law was adopted.

The road network to approach and exit the project provided ready access in various directions (Liberty Road to the south, Bennett Road to the west, Mineral Hill Road to the north). As noted above, the roads and intersections will all function at adequate levels of service even if approved at 235 units under the objective criteria in Carroll County Code Chapter 71.

The Board was convinced that authorization of the request with regard to a conditional use was consistent with the purpose of the zoning ordinance, appropriate in light of the factors to be considered regarding conditional uses of the zoning ordinance, and would not unduly affect the residents of adjacent properties, the values of those properties, or public interests. Based on the fact that the concept plan was consistent with the Master Plan, the Board found that the proposed project would not generate adverse effects (i.e. noise, traffic, dust, water issues, lighting issues, property depreciation, etc.) greater here than elsewhere in the zone.

A variance may be approved "where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the chapter would result in practical difficulty or unreasonable hardship." Carroll County Zoning Code 223-2 Definitions. The Board heard evidence about the parking and the variance from Mr. Hackett and Mr. Silverman. The Board determined that the property was unique. The property was unique in part based on the extreme slope where the parking lot would be located. A significant amount of grading would need to be accomplished. There was testimony that the number of required parking spaces was excessive and would not be used by staff or residents.

The Board further concludes that the Applicant has shown that the parking requirements in the Code exceed what is reasonably necessary for this use. In turn, the expense, land disturbance, pavement and impervious area created in providing excess parking is unnecessary and provides no benefit to the neighborhood or community. Accordingly, the requested variance to reduce parking to 120 parking spaces is granted to avoid this practical difficulty.

The Board voted to grant the motion to reduce the number of parking spaces from 180 to 120 parking spots and thus granting a variance by a 2-1 margin with one abstention.

7 January 2013
Date


Gary Dunkleberger, Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Article 66B, Section 4.08 of the Annotated Code of Maryland Rules of Procedure.

Pursuant to Section 223-192C of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.

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