

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
NW side of Glen Arm Road; 1000 feet		
SW of the c/l of Notchcliff Lane	*	DEPUTY ZONING
11 th Election District		
3 rd Councilmanic District	*	COMMISSIONER
(11630 Glen Arm Road, et al.)		
	*	FOR BALTIMORE COUNTY
Glen Meadows Retirement Community		
<i>Petitioner</i>	*	CASE NO. 2009-0264-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Jeffrey J. Davis, Sr., Vice President and Chief Financial Officer for Presbyterian Homes, Inc. (“PHI”), owner and operator of the life care/continuing care facility (“the Facility”), on behalf of the legal property owner, Glen Meadows Retirement Community. Special Hearing relief is requested in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To approve the assignment of acreage to the existing tenant houses for the purpose of selling the houses on separate lots and to confirm that this assignment of acreage will not impact the facility’s original approval under Section 1A04.4 of the B.C.Z.R. (1984); and
- Pursuant to Sections 32-4-107(a) and 32-4-409(c) of the Baltimore County Code (“B.C.C.”) for a waiver to allow two lots (11760 and 11762 Glen Arm Road) with access to the public street through a proposed right-of-way for access rather than an in-fee strip; and
- To allow any existing conditions to remain on the proposed tenant house lots regardless of the applicable height and area regulations or regulations pertaining to accessory structures; and
- To amend all prior approved plans.

The subject property and requested relief are more fully described on the two-page site plan which was marked and accepted into evidence as Petitioner’s Exhibits 2A and 2B.

Appearing at the requisite public hearing in support of the requested special hearing was Jeffrey J. Davis, Sr., Vice President and Chief Financial Officer, and John Fagnoli, Member of the Board of Directors, of PHI, on behalf Petitioner Glen Meadows Retirement Community, as did Tom Connors, Director of Operations for the Facility. Robert Hoffman, Esquire and Patricia Malone, Esquire appeared as attorneys on behalf of Petitioner. Also appearing in support of the requested relief was Mitch Kellman, land planner and zoning expert with Daft-McCune-Walker, Inc., the firm responsible for preparation of the site plan filed in this case. Appearing on behalf of the Baltimore County Department of Environmental Protection and Resource Management (“DEPRM”) was David Lykens, Development Coordinator.

Also in attendance were two area residents, Alan Bock and Robert Streib, who appeared to testify in favor of the requested relief. There were no Protestants or other interested persons in attendance at the hearing, although this Office received correspondence dated June 15, 2009 from Peter Max Zimmerman, People’s Counsel for Baltimore County, stating certain objections to the relief being requested by Petitioner. Mr. Zimmerman restated these objections in a letter dated October 7, 2009 and received after the hearing was concluded. In this letter, Mr. Zimmerman complained that he had not received notification of the September 29, 2009 hearing date, which had been rescheduled from the original date of June 17, 2009. Mr. Zimmerman did not request that any action be taken in response to his letter. I have reviewed both of his letters and have considered his comments in deciding this matter.

Testimony and evidence in the case proceeded by way of a proffer and revealed that the subject property is very large and irregular-shaped, and encompasses approximately 483.41 acres located on both the east and west sides of Glen Arm Road at Notchcliff Lane in the Glen Arm area of Baltimore County. The property is split-zoned R.C.5 (162.1± acres) and R.C.2 (321.31± acres). The relief sought in this matter is related to six existing tenant houses on the campus of

the Facility. Mr. Hoffman provided a history of the Glen Meadows property. As Mr. Hoffman explained, the regulations governing the R.C.5 Zone were changed in 1984 to permit by right “life care or continuing care facilities – subject to the provisions of [BCZR] Subsection 1A04.4.” *See*, Section 1A04.2.12 of the B.C.Z.R. (reference Bill No. 6, 1984). Section 1A04.4 of the B.C.Z.R., which contained special provisions for life care or continuing care facilities in the R.C.5 Zone, was also added to the R.C.5 regulations at that time. Section 1A04.4 allowed life care or continuing care facilities as a “by right” permitted use in the R.C.5 Zone, but only under very specific conditions. For example, a life care or continuing care facility site was required to have a minimum of 450 acres; however, R.C.2 zoned land could be combined with R.C.5 zoned land to meet this acreage requirement. As Mr. Hoffman also explained, Section 1A04.4 was drafted with the Glen Meadows property in mind, and there have been no other facilities developed in the County under this provision.

On July 12, 1984, the Notchcliff Life Care Center (now Glen Meadows Retirement Community) was approved by way of a County Review Group (“CRG”) Plan, which was marked and accepted into evidence as Petitioner’s Exhibit 1. This plan reflected a 483.41± acre site, with a 60.426± acre building envelope site as defined in Section 1A04.4, and approved a maximum density of 332.34 dwelling units. The plan also referred to existing tenant houses located on the subject property that were to remain and further indicated that the 332.34 dwelling units approved for the plan was “exclusive of” these existing tenant houses. In other words, the Facility could utilize all 332.34 dwelling units, without regard to the tenant houses.

In the years since the Facility was approved and constructed, it has been expanded with a nursing wing, and the unit mix has changed slightly over the years. These changes have been effected through a series of amendments or “refinements” to the CRG Plan, the most recent of

which (4th Amended CRG Plan) was approved in March, 2009. At the present time, the Facility has utilized 211 of the permitted 332.34 dwelling units.

Outside of the building envelope site, the remainder of the Glen Meadows property consists of wooded areas and agricultural fields, with various barns and other outbuildings. Much of the property continues to be farmed, as was confirmed by Mr. Streib, a farmer who leases land from Glen Meadows for farming. Additionally, Glen Meadows continues to lease the six individual “tenant” houses outside the building envelope to persons who have no connection to the Facility. Two of the tenant houses are located in the R.C.5 Zone and four are in the R.C.2 Zone. Photographs of each of the tenant houses were shown on a photographic exhibit that was marked and accepted into evidence as Petitioner’s Exhibit 3. Petitioner also submitted a topographic map from 1974, which was marked and accepted into evidence as Petitioner’s Exhibit 4, demonstrating definitively that each tenant house was in existence at the time the Facility was originally approved.

At this juncture, Glen Meadows is seeking to create separate, in-fee lots around the six tenant houses and to convey them out of Glen Meadows’ ownership. As Mr. Davis explained, from Glen Meadows’ perspective, these tenant houses have become a drain on the Facility in terms of maintenance costs and upkeep. Potential lots for these tenant houses were shown on the original site plan filed with the Petition for Special Hearing. As was explained during the hearing, it is important to note that the creation of these lots would have no effect on Glen Meadows classification as a life care/continuing care facility under Section 1A04.4 of the B.C.Z.R. Moreover, with the requested assignment of acreage to the tenant houses, Glen Meadows would still retain more than the 450 acres required by that section of the B.C.Z.R.

After Glen Meadows filed its Petition, several issues arose, including a question as to whether the repeal by the Baltimore County Council of Section 1A04.4 of the B.C.Z.R. in 2005

had any impact on the Facility and/or on any future expansion thereof. On this point, Mr. Hoffman provided some background. Through the passage of Bill No. 55-04, the Baltimore County Council did, in fact, repeal Section 1A04.4 and, therefore, removed the only provisions relating to life care and continuing care facilities in the R.C.5 Zone. However, Mr. Hoffman also referenced Bill No. 58-09, passed earlier this year, which provides that a “non-residential plan,” defined to include a plan of development for a life care or continuing care facility such as Glen Meadows, becomes “vested” or “protected” when substantial construction occurs with respect to any portion of the plan. *See*, BCC Sections 32-4-101(CCC), (DDD) and 32-4-264(B)(1). Bill No. 58-09 further provides that “a vested development plan shall proceed in accordance with the approved plans and the laws in effect at the time plan approval is obtained.” *See*, BCC Section 32-4-101(CCC). As Mr. Hoffman explained, substantial construction clearly has occurred on the Facility. Consequently, the Glen Meadows facility is vested under the laws in effect at the time the original CRG Plan was approved in 1984, and the repeal of Section 1A04.4 in 2005 has no impact on Glen Meadows. Hence, Glen Meadows may continue to rely on the CRG Plan and the laws in effect in 1984.

A second issue arose regarding the Facility’s compliance with the requirements for the protection of prime and productive soils. In reviewing the plan for DEPRM’s Agricultural Preservation section, Wallace Lippincott raised a concern about the size of two of the proposed lots in relation to the application of BCC Section 32-4-415 and the policies related to the preservation of prime and productive soils. After consultation with DEPRM representatives, Glen Meadows reduced the size and/or reconfigured several of the proposed lots. The redlined site plan reflects the revised lot layout. The largest of the lots proposed on the original plan was reduced in size from 10.89 acres to 2.37 acres, and the total area proposed to be conveyed for all six lots was reduced from a total of 31.7± acres to 19± acres. Under this redlined proposal, the

facility would retain 464.41± acres, which far exceeds the 450 acres required by Section 1A04.4 of the B.C.Z.R. At the hearing, David Lykens confirmed that DEPRM is generally agreeable with the redlined lots; however, as indicated on the plan, he pointed out that the final lots may change based on the results of further engineering studies. If the lot sizes/configuration are to change significantly, Mr. Lykens requested that Glen Meadows be required to appear again before the Zoning Commissioner to seek additional approval of the revised lots.

The last issue that arose related to density allocation for the proposed lots. As mentioned, the 1984 CRG Plan clearly reflects an understanding that the tenant houses were in existence prior to creation of the life care/continuing care facility, were rented out at that time, and were proposed to remain. These circumstances lead one to conclude that the assignment of density to these houses was considered as part of the CRG approval. As Mr. Hoffman explained, the County's development file shows that a Zoning Associate made a comment to the CRG in July of 1984, suggesting that, if the single-family tenant dwellings were to remain on the subject property, they should be included in the density calculations. This suggestion was, evidently, considered by the CRG, but not followed because the density calculation note on the plan approved indicates that the number of dwelling units allowed was "exclusive of" tenant houses. Based on this procedural history, Mr. Hoffman argued that these six houses were, essentially, approved as separate uses from the Facility, and, as such, the density for the Facility (332.34 dwelling units) was approved separate and distinct from the tenant houses, which were permitted to remain and be used as separate residences.

However, recognizing the potential for controversy, Mr. Hoffman suggested a less objectionable position on this issue, which would be to require Glen Meadows to utilize six of the dwelling units from the Facility to create lots for the tenant houses, reducing the available density from 121.34 dwelling units ($332.34 - 211 = 121.34$) to a total of 115.34 dwelling units.

As Mr. Hoffman argued, had the CRG required Glen Meadows to assign density to the tenant houses in 1984, this is the calculation that would have resulted. Mr. Davis confirmed that Glen Meadows would not object to allocating density in this manner.

With regard to the issue of creating lots around the six houses, two area residents offered their support for granting this relief, including Mr. Bock, an adjacent property owner who testified at the hearing that he believes individual ownership of these houses would be good for the neighborhood rather than having the houses continue to be rented to tenants.

Moving on from the concept of the assignment of acreage and the creation of the lots, Mr. Hoffman next described the other elements of relief being requested. Petitioner Glen Meadows also has requested an approval that would allow existing conditions to remain on the proposed tenant house lots without regard the applicable height and area regulations or regulations pertaining to accessory structures. According to Mr. Kellman, this relief relates to several existing accessory structures located on the property (for instance, 11660 Glen Arm Road), which, when the lots are created, may not meet the technical requirements of the underlying zoning classification for accessory structures. For any potential purchasers of such lots, Petitioner desires for them to have the option of retaining the existing structures and conditions without the need to seek additional zoning relief.

Petitioner also requests a waiver to allow two lots (11760 and 11762 Glen Arm Road) with access to the public street through a proposed right-of-way, rather than an in-fee strip, pursuant to Sections 32-4-107(a) and 32-4-409(c) of the BCC.¹ As shown clearly on the redlined site plan, the houses located at 11760 and 11762 Glen Arm Road are positioned approximately 1,000 feet off of Glen Arm Road with a single driveway providing access to the

¹ As Mr. Hoffman explained, even though there were no panhandle provisions in the Code in 1984, Glen Meadows decided to file this request to avoid any contention that it failed to seek a necessary approval for the driveway.

houses. Mr. Kellman testified that the proposed access easement would provide a sufficient connection between the proposed lots and Glen Arm Road without the need for an in-fee strip normally required under BCC Section 32-4-409. Further, the request would allow the farm fields to remain in undivided ownership, allowing easier access for farm vehicles.

The final element of relief is the request to amend prior approved zoning plans, a typical request to ensure, where there has been prior zoning relief on a property, that all zoning plans are up to date and consistent.

After due consideration of the testimony and evidence presented, I am persuaded that the requested relief should be granted. Although requests for the division of property into separate lots for non-conforming dwellings have been granted in the past, I find the situation presented here to be unique. Based on the evidence presented, the Glen Meadows facility appears to be the only one of its kind approved under the former Section 1A04.4 of the B.C.Z.R. From the background provided by Mr. Hoffman, and upon review of Bill No. 58-09, I am convinced that Glen Meadows should be permitted to proceed in accordance with the CRG Plan approved in 1984 and the rules, including the Zoning Regulations, in effect at the time of that approval. In considering that approval, the CRG clearly took into consideration the existence and continued use of these single-family dwellings on the property as separate uses. Thus, I find Glen Meadows' proposal to create separate lots for these houses, particularly with the reduced acreage shown on the redlined site plan to be reasonable. I will approve the assignment of acreage as requested and also confirm that the creation of the lots will not impact the Facility's approval. With regard to density, however, although I understand Mr. Hoffman's primary argument, I will require Glen Meadows to utilize six dwelling units from the existing Facility's density allowance and, accordingly, reduce the number of available dwelling units from 121.34 to 115.34.

In allowing for the creation of these lots, I have also considered the request to allow certain existing conditions to remain on the proposed tenant house lots that otherwise do not meet the applicable height, area, or accessory structure regulations. Based on the information presented by Glen Meadows, I find there to be sufficient justification for permitting these conditions to remain, and I will approve this request as well.²

Petitioner also has demonstrated that its request meets the standards for granting a waiver under BCC Sections 32-4-107(a) and 32-4-409(c) to allow lots 11760 and 11762 Glen Arm Road to access the public street through a proposed right-of-way for access, rather than an in-fee strip. I find that the proposed access easement provides a sufficient connection between the proposed lots and Glen Arm Road. Also, the waiver allows the size of these two lots to be kept to a minimum number of acres and provides further protection for the agricultural uses on the property.

Lastly, I will grant Glen Meadows' request to amend all prior zoning plans to be consistent with the relief granted herein.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's special hearing requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 29th day of October, 2009 that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

² Obviously, this decision would not affect future accessory structures or additions to the dwellings, which would need to comply with the applicable height, area, or accessory structure regulations, or seek zoning relief for these future structures.

- To approve the assignment of acreage to the existing tenant houses for the purpose of selling the houses on separate lots and to confirm that this assignment of acreage will not impact the facility's original approval under Section 1A04.4 of the B.C.Z.R. (1984); and
- Pursuant to Sections 32-4-107(a) and 32-4-409(c) of the Baltimore County Code (B.C.C.) for a waiver to allow two lots (11760 and 11762 Glen Arm Road) with access to the public street through a proposed right-of-way for access rather than an in-fee strip; and
- To allow any existing conditions to remain on the proposed tenant house lots regardless of the applicable height and area regulations or regulations pertaining to accessory structures; and
- To amend all prior approved plans,

be and are hereby GRANTED, subject to the following:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. At the time a revised CRG Plan is submitted to Baltimore County for review, Petitioner shall amend the plan to reduce the number of available dwelling units by 6 (121.34 – 6 = 115.34) to account for the proposed 6 lots.

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

____SIGNED____
 THOMAS H. BOSTWICK
 Deputy Zoning Commissioner
 for Baltimore County

THB:pz