

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
S/S of Carroll Manor Road, 466' W of		
Sweet Air Road	*	ZONING COMMISSIONER
(5001 Carroll Manor Road)		
11 th Election District	*	OF
3 rd Council District		
	*	BALTIMORE COUNTY
Jessica Lynn Mayne		
Petitioner	*	Case No. 2011-0054-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, Jessica Lynn Mayne, by and through her attorney, Deborah C. Dopkin, Esquire. The Petitioner requests a special hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to confirm the approval of an intensification of an existing nonconforming assisted living facility by 25% (from 8 beds to 10 beds) pursuant to B.C.Z.R. Section 104.3. In addition, special hearing relief is requested for a modified parking plan pursuant to B.C.Z.R. Section 409.12.B and to affirm the relief granted in Case No. 87-273-A. The subject property and requested relief are more particularly described on the red-lined site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Jessica Mayne, property owner and President of Dulaney Valley Assisted Living operating at this location, and Richard E. Matz, P.E., with Colbert Matz Rosenfelt, Inc., the consultant who prepared the site plan for this property. The Petitioner was represented by Deborah C. Dopkin, Esquire. Also present at the hearing were the Petitioner's husband Terry Mayne, her mother Suzanne Hannon Cromwell, RN, MSN, who is the delegating nurse for the facility, Edward J. Roubal and Dorothy J. Roubal, owners of the adjoining residence located at 4923 Carroll Manor Road, who attended

as concerned neighbors. There were no Protestants or other interested persons present. There were no adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies. Petitioner's counsel, in her opening remarks, identified the property as a nearly 100 year old Victorian farmhouse built in 1912 and enlarged pursuant to Case No. 87-273-A, which permitted residential use of the adjoining, now connected, barn. The property is located in the Baldwin area of Baltimore County split-zoned R.C.2 with some R.C.5 and is used as a small, family operated assisted living facility for eight residents.

Mr. Matz, an engineer registered and licensed in Maryland, and accepted as an expert in land use and zoning, testified that the property consists of approximately 2.6 acres, more or less, improved by the residence and introduced a number of photographs showing the improvements, access and existing trees on the site. *See* Petitioner's Exhibits 2 and 3. There is no signage on the property. The area is primarily residential and agricultural. Mr. Matz testified that the property has been used as an assisted living since the 1990's and introduced copies of licenses issued by the State of Maryland permitting such use. Mr. Matz also described the access and parking serving the site along with a written agreement with the Roubals whereby each owner allowed the other use of limited portions of their respective properties. Mr. Matz further testified that under the current petition no physical changes of any sort are proposed, and that the Petitioner merely wishes to intensify the use by being allowed to add two (2) residents in existing space within the residence.

Jessica Mayne, the owner of the property testified that her family has owned and operated the property since at least 1996. In addition, a family member resides at the site full time, and there is always one employee in residence. Ms. Mayne's mother, Suzanne Hannon Cromwell, is a geriatric nurse who attends the facility. Ms. Mayne also testified that there is a waiting list for

the residence and that most of the residents are from the area. Ms. Mayne explained that the residents participate in day to day activities and are involved in housekeeping to the extent they are able. There are occasional visitors, though there are some residents who have no family members who visit.

Upon questioning, Ms. Mayne testified that there have been no physical changes to the buildings since the 1997 addition of a breezeway connecting the barn to the house, and that no addition or enlargement of floor space, rooms, lot area or of any type is planned, nor will there be additional employees. She also testified that the building is sprinklered and is routinely inspected for fire safety by the Baltimore County Fire Marshall.

In regard to parking, the property provides for two (2) parking spaces in front of the two (2) additional paved and striped spaces located on the southwest side of the facility. The two (2) side spaces are accessed by driveway from Carroll Manor Road running between the Roubals property and the Petitioners as provided for in a mutual agreement, dated May 25, 2000. (*See* Petitioner's Exhibit 4). Four (4) parking spaces are required for a ten (10) bed facility. Mrs. Mayne and Mrs. Cromwell testified from personal knowledge and 14 years of experience at the facility that there is no parking problem on site today.

Mrs. Roubal, who resides next to the property sought assurance that there will be no change to the current driveway and parking arrangement between the properties, because there was some confusion that arose under the originally, now modified, site plan.

This case presents a unique situation. The subject use has existed at this location since the 1990's under the County's policy recognizing licensing by the State as pre-emptive of the zoning regulations. (Zoning Commissioner's Policy Manual [ZCPM] RM-5 and 101). The use was affirmed as valid by the County as recently as 2006. (*See* Petitioner's Exhibit 6C). Therefore, I

find that the use exists as a legal, valid nonconforming use. Petitioner avers that it is entitled to add two (2) beds to the existing facility as an intensification of the existing use and that such an intensification is consistent with Maryland case law.

Nonconforming uses are defined in B.C.Z.R. Section 101 and regulated by Section 104 thereof. A nonconforming use is defined as “a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such use”. Often, the nonconforming use designation is applied to grandfather an otherwise illegal use. If the Petitioner can establish that the use began prior to the effective date of the zoning regulation which prohibited such use, and the use has continued without interruption since that time, that use may continue as nonconforming. In this case, the relevant date is May 29, 2004, the date the current regulations were adopted (Council Bill 19-04) that removed assisted living facilities from the resource conservation zones as a permitted use.

Reviewing the cases cited by Petitioner’s counsel, the factors to be considered for an intensification of a nonconforming use are:

- (1) to what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use?
- (2) is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind?
- (3) does the current use have a substantially different effect upon the neighborhood?
- (4) is the current use a "drastic enlargement or extension" of the original nonconforming use?

McKemy vs. Baltimore County, 39 Md.App. at 269-70 (1978); *Lone v. Montgomery County*, 85 Md.App. 477, 496-97, 584 A.2d 142, quoted in *Commissioners of Carroll County v. Zent*, 86 Md.App 745 (1991).

In addition, counsel raises the distinction drawn in the case of *Prince George's Co. v. Gardiner*, 293 Md. 259 (1981). In that case the court considered increases in floor area, lot area, and a change in business methods, new or accessory services or facilities as being enlargements, not intensifications of a nonconforming use. None of those activities will occur in this case.

Further research reveals that in Maryland increasing the number of cars, boats, hours, or volume of business are intensifications of use, not extensions or enlargements. Thus, I find that allowing two (2) additional beds, with no other change to the use, is a permitted intensification.

Based upon testimony and evidence offered, I find that despite the somewhat problematic nature of the case, Petitioner has satisfied the requirements of Sections 104.3 and 502.1 of the B.C.Z.R., and that without the requested relief, the situation before me cannot be remedied. Even so, any relief granted today must be limited in scope and no further extension, enlargement or intensification of the use shall hereafter be permitted. I also find that the Petitioner would suffer undue hardships if a modified plan were not accepted under these circumstances.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, I find that the Petitioner's request for special hearing relief should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 12th day of October 2010, that the Petition for Special Hearing, filed pursuant to Section 104.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), seeking an intensification of an existing assisted living facility by 25% (8 beds to 10 beds), in accordance with Petitioner's Exhibit 1 (amended site plan), be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the special hearing relief request for a modified parking plan pursuant to B.C.Z.R. Section 409.12.B, while rendered in part moot by the filing of the amended site plan, is hereby GRANTED; and

IT IS FURTHER ORDERED that the variance relief granted in Case No. 87-273-A, as detailed on the site plan submitted in that case (Petitioner's Exhibit 5), is hereby AFFIRMED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner may apply for any necessary permit(s) and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her 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. Other than emergencies and visits to be with residents who are in end stage of life, visiting hours shall be between the hours of 9:00 AM and 6:00 PM.
3. The decision in this case is not legal precedent that may be cited as such in any other zoning case involving assisted living facilities in a resource conservation zone.
4. There shall be no business signage erected on the building or property which is to be maintained to retain the residential appearance of the area.
5. The Petitioner shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management (DPDM) reasonable access to any of the buildings on the subject property to insure compliance with this Order.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County