

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	*	OFFICE OF
(13801 York Road)	*	ADMINISTRATIVE HEARINGS
8 th Election District	*	FOR BALTIMORE COUNTY
3 rd Council District	*	Case No. 2016-0139-SPHXA
Broadmead, Inc., <i>Legal Owner</i>	*	
Petitioner	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Broadmead, Inc., the legal owner (“Petitioner”). The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to amend the site plan and Order in Case No. 06-435-SPH and to expand a special exception for a continuing care facility, of less than 25%. A Petition for Special Exception seeks to use the herein described property for a continuing care facility. Finally, a Petition for Variance seeks approval to allow a front of building to rear of building of 75 ft. in lieu of the 120 ft.; of 100 ft. in lieu of 140 ft. of front to front, and 77 ft. in lieu of 110 ft. of front to side.

Appearing at the public hearing in support of the requests was Nicholas Linehan, Mark Keeley, Mitch Kellman and John Howl. John B. Gontrum, Esq., represented the Petitioner. Several citizens attended the hearing to obtain additional information regarding the project and express concerns about certain aspects of the proposal. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the State Highway Administration (SHA).

The subject property is approximately 90.82 acres in size and is split-zoned: DR 16 (12.00 acres) DR 1 (37.39 acres) RC 6 (31.04 acres) and DR 5.5 (9.99 acres). Petitioner has since 1977 (Case No. 1977-185-SPHXA, Ex. 2A) operated a senior living community (referred to at the time as a “convalescent home”) on the property. The facility was expanded in 1990 and 2006, and orders from prior zoning cases approving those plans were submitted as Petitioner’s Exhibits 2B-2C. While the original tract acquired by Petitioner was approximately 80 acres, a 10 acre parcel (the “Provenza” tract) was acquired in 2007, bringing the overall site to approximately 90 acres. The site contains an historic structure known as Holly House along with an historic environmental setting (HES) on which the landmark is located.

At present, Petitioner proposes to construct additional facilities for memory care patients (to accommodate 44 residents) as well as 52 independent living units. According to testimony, this would constitute an approximate 20% increase in the size and density of the use when compared to the current operation.

SPECIAL EXCEPTION

Broadmead obtained in 1977 (Case No. 77-185-SPHXA) a special exception for a “convalescent home.” In 1990 (Case No. 1990-376-SPHX) the special exception for a convalescent home was revoked, and Petitioner was granted a special exception to operate on the D.R. zoned portions of the site a continuing care facility. The special exception petition in this case also seeks approval of a “continuing care facility.” Although a “continuing care facility” was previously permitted by special exception in a D.R. zone, Bill 19-2004 changed the law and such a use is no longer permitted. The portions of the site on which the continuing care facility is situated are zoned D.R. This zone does not permit a “continuing care facility” (by right or special exception), and thus the petition must be denied.

At the hearing Broadmead’s counsel characterized the current use as a “non-conforming special exception.” But under Maryland law, a property cannot operate “where the use is both a non-conforming use and a special exception use *when it is the same use.*” Purich v. Draper Props., 395 Md. 694 (2006)(emphasis in original). Here, when the law changed in 2004 to no longer permit the continuing care facility by special exception, the use became lawfully nonconforming under B.C.Z.R. §104. Pursuant to that regulation, such a use may be “extended” by no “more than 25% of the ground floor area of the building so used.” B.C.Z.R. §104.3.

In light of the foregoing, the Petition for Special Hearing will be granted, although the Order granting such relief will make clear the “extension” permitted is of a lawful non-conforming use, rather than to “expand a special exception for a continuing care facility,” as requested in the Petition. In addition, nonconforming uses, while entitled to constitutional protection, are disfavored under Maryland law. Prince George’s Co. v. E.L. Gardner, Inc., 293 Md. 259 (1982). As such, a condition will be included in the final order precluding any further extension of the nonconforming continuing care facility use, subject of course to any future changes in zoning that would permit the use by right or special exception.

VARIANCES

Based upon the testimony and evidence presented, I will grant the petition for variance.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The Petitioner has met this test. The site is irregularly shaped and the available building envelope is constrained by environmental features. As such the property is unique. If the B.C.Z.R. were strictly interpreted, the Petitioner would suffer a practical difficulty since it would be unable to construct the proposed addition to its facility. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

THEREFORE, IT IS ORDERED this 25th day of February, **2016**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to approve as a lawful nonconforming use a continuing care facility, along with an extension of that facility of less than 25% as shown on the site plan marked as Exhibit 1A, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to use the herein described property for a continuing care facility, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the B.C.Z.R. to allow a front of building to rear of building of 75 ft. in lieu of the 120 ft.; of 100 ft. in lieu of 140 ft. of front to front, and 77 ft. in lieu of 110 ft. of front to side, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioner must obtain approval from Baltimore County of a landscape plan for the site.
3. Prior to issuance of permits Petitioner must submit architectural elevations to the DOP demonstrating that the proposed improvements do not negatively impact the Holly House

or the Historic Environmental Setting.

4. Prior to issuance of permits Petitioner must complete construction of the roadway improvements (i.e., “Maryland T” intersection) as shown on the concept plan marked as Petitioner’s Ex. No. 6.
5. No further extension of the nonconforming continuing care facility use shall be permitted.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln