

Tax Map/Block/Parcel  
No. 73-12-630

Building Permit/Zoning  
Certificate No. 91-0203

Case 3520

**OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND**

**APPLICANT:** Richard C. Colandrea  
10461 Waterfowl Terrace  
Columbia, Maryland 21044

**ATTORNEY:** Charles M. Preston, Esquire  
188 East Main Street, P.O. Box 389  
Westminster, Maryland 21157

**REQUEST:** A conditional use for a retirement home  
apartment complex, and a variance reducing one  
minimum required side yard of 40 feet to 25 feet

**LOCATION:** 1533 Liberty Road (Md. Rt. 26) in Election  
District 5

**BASES:** Article 7, Sections 7.2(c) and 7.5; Article 15,  
Sections 15.0 and 15.5; Ordinance 1E

**HEARING HELD:** April 26, 1991

On April 26, 1991, the Board of Zoning Appeals heard testimony and received evidence concerning the conditional use request for a retirement home apartment complex, and a variance reducing one minimum required side yard of 40 feet to 25 feet at 1533 Liberty Road (Md. Rt. 26).

The Board visited the site on April 23, 1991.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will approve the requests.

The pertinent findings determining the Board's decisions include the following facts:

**FINDINGS OF FACT**

In 1987, the Board of Zoning Appeals conditionally authorized establishment of a retirement home apartment complex for this property in Case 2435. The conditional authorization has since expired in accordance with the Board's rules. The Board understands this application to be a request to reauthorize the retirement home apartment complex as conditionally authorized in Case 2435.

The concept plan, Applicant's Exhibit 2, depicts three two-story buildings with 25 apartments in each building. This plan is similar to the site plan presented in Case 2435, remanded, as both plans are for 3 apartment buildings of 25 apartments each. In addition to being only two-stories, each apartment is now planned to have exterior entry. However, no floor or elevation plans were submitted in the present case.

In proceeding in the site development plan process following the conditional authorization, the applicant submitted a concept plan, identified as Freedom Meadow, to the Subdivision Advisory Committee. The concept plan, Applicant's Exhibit 3, was substantially different from the plan presented to the Board and conditionally authorized in Case 2435. Comments of the Subdivision Advisory Committee regarding the plan were forwarded to the applicant in a letter dated August 25, 1989. (Applicant's Exhibit 7.) The inconsistency was noted in Comment 4 of the letter. Thereafter in a letter May 4, 1989, the Board advised the applicant, his attorney, and the engineering firm that changing the plan from the plan conditionally authorized by the Board would require resubmission to the Board. In a subsequent letter dated November 22, 1989, the zoning administrator advised the applicant that the Board's authorization had expired September 26, 1989, for reason that the site plan approved by the Board has not been actively pursued.

The Board does not understand why the applicant presented a plan to the Subdivision Advisory Committee that was inconsistent with the site plan presented to the Board and the Board's conditional authorization in Case 2435. The Board's decision specifies that the plan submitted and conditionally approved was for 3 apartment buildings, with 25 apartments in each building for a total of 75 apartments. The plan was titled "Proposed Elderly Housing Units" as prepared by Edmunds and Hyde Inc., dated July 30, 1987.

Based to some extent on the comments expressed in Item 4 of the Subdivision Advisory Committee's letter, the applicant has opted to submit a new plan and request reduction of the minimum required side yard of 40 feet to 25 feet for the westerly side yard. The variance is requested because of the configuration of the property; the environmental sensitive area extending along the easterly side property line, including drainage of surface stormwater; and, the topography of the property, which generally slopes upward from the easterly side of the property to the westerly side. Each of these factors significantly affect use of the property and substantiate reasonable cause to authorize relaxation of the minimum side yard requirement.

Experts in landscape architecture and real estate appraisal testified that the planned retirement home apartment complex was an appropriate use of the property, and would not adversely affect the values of adjacent properties.

The technical memorandum regarding vehicular traffic and traffic safety, Applicant's Exhibit 4 in Case 2435, remanded, was supplemented by an update, identified as Applicant's Exhibit 6. Although it is obvious that the volume of traffic has increased on Liberty Road since December of 1986 when the technical memorandum was prepared and that the retirement apartments will generate a moderate amount of traffic, the Board generally concurs with the conclusion that the additional traffic will not unduly affect the existing traffic or traffic safety problems in the immediate area.

The property is served by public water and sanitary sewerage facilities.

APPLICABLE LAW

The Articles and Sections cited below are of Ordinance 1E.

The 6.762 acre tract is zoned "R-20,000" Residence District as depicted on zoning map 73B. The land use provisions for the district are expressed in Article 7. Section 7.2, Conditional Uses (requiring Board authorization), paragraph (c) reads in relevant part:

...retirement homes,...subject to prior approval of the site development plan and exterior design of the structure by the Commission.

Section 7.5, Lot Area, Lot Width and Yard Requirements specifies the following minimums for retirement homes:

Lot Area	-	45,000 square feet
Lot Width	-	150 feet
Density	-	1 dwelling unit per 3,000 square feet [of lot area]
Front Yard Depth	-	50 feet
Side Yard, each	-	40 feet
Rear Yard	-	50 feet

The 8/12/71 amendments of Section 7.5 provided that the density is subject to the determination of the Commission and Health Department where the lot area exceeds 180,000 square feet, and that the front, side and rear yards are to be determined by the Commission and the Health Department based on the site development plan where the lot area exceeds 45,000 square feet.

Retirement homes are defined in Article 20, Section 20.30B (Amended 12/11/79) as:

Specifically designed multi-dwelling unit buildings  
to which occupancy is restricted to elderly citizens.

Here, it would be appropriate to read *people* rather than *citizens*.

Article 17, Section 17.7 governs the Board in conditional use cases, and Article 15, Sections 15.0 and 15.5 apply to variance cases.

#### REASONING

As indicated above and in the Board's decision in Case 2435, remanded, the retirement home apartment complex is an appropriate use of the property that will not adversely affect the adjoining properties. However, the Board is equally convinced that authorization of the conditional use and variance must be conditional as in Case 2435, remanded, in order to promote the intent and purpose of the zoning ordinance, and ensure protection of the public interests.

With regard to provisions of Section 7.5 pertaining to the maximum density of one dwelling unit per 3,000 square feet of lot area, and the minimum required front, side and rear yards of lots in excess of 180,000 square feet and 45,000 square feet, respectively, resting with the Commission and the Health Department, it is not the intent of the Board to usurp the authority of the Commission or the Health Department.

The Board's determination concerning the maximum number of retirement apartments to be conditionally authorized is based on the applicant's plans as presented to the Board and the particular circumstances in this case. In authorizing the variance, the intent of the Board is to remove any uncertainty regarding the necessity for the Board to authorize the variance, the particular circumstances of the property which justify relaxation of the minimum requirement, and the applicant's plans for development of the retirement home apartment complex.

#### CONCLUSION

The Board of Zoning Appeals hereby authorizes the conditional use for establishment and operation of the proposed retirement home apartment complex and variance to the minimum required side yard subject to the following conditions of authorization:

1. The Board's authorization is based on the concept plan presented to the Board and identified as Applicant's Exhibit 2.
2. Development of the retirement home apartment complex shall comply with the provisions of Article 14, Division I pertaining to on-site parking spaces and facilities.

3. The owner shall obtain an entrance permit from the Engineering Access Permits Division of the State Highway Administration, Maryland Department of Transportation.
4. Prior to any construction on the site, the owner must obtain Planning Commission approval for a site plan of the facility, as that Commission determines necessary and appropriate for the site and its location pursuant to Section 7.2(c), to include a landscaping plan which minimizes the visual effect of this site on adjoining properties.
5. There shall be no occupancy of any dwelling unit until all interior roadways are constructed pursuant to design and construction standards for a public road in Carroll County having a paved surface of twenty feet (20') and a design to serve any emergency vehicle which might be needed at the facility and which is likely to respond.
6. The owner shall enter into a standard Public Works Agreement (except to the extent that these roads are not to become County roads or deeded to the County) for the construction of the interior roadways, including a bond assuring their faithful completion, all prior to any construction on the site.
7. Upon completion of construction, the roads and parking areas shall be maintained in a good and safe condition at all times.
8. The owner shall use the property only in compliance with the site plan and landscaping plan and shall maintain the property in accordance with the site plan and landscaping plan at all times.
9. No one shall be a lessee of a unit within the facility who is not elderly and all residents<sup>3</sup> of the facility shall be adults.
10. The owner shall submit a list of all tenants and their ages to the Zoning Administrator on or before July 1 of each year for those units rented during the preceding twelve (12) months.

May 8, 1991  
Date

John Totura  
John Totura, Chairman

<sup>3</sup> By "resident" we mean a person who resides in a unit for at least one (1) month on a regular basis.