

IN THE MATTER OF	*	BEFORE THE CECIL COUNTY
THE APPLICATION OF	*	BOARD OF APPEALS
ALLCARE ASSISTED LIVING, LLC	*	CASE NO.: 3651
	*	
(Special Exception – NAR)	*	

* * * * *

OPINION

The Cecil County Board of Zoning Appeals (the “Board”) is now asked to consider the application of Allcare Assisted Living, LLC (the “Applicant”). Applicant seeks a special exception to allow expansion of an existing assisted living facility on property owned by McGlothlin Properties, LLC located at 1505 Belvedere Road, Conowingo, Maryland 21918, designated as Parcel 317 on Tax Map 24 in the Fifth Election District of Cecil County (the “Property”), in an area zoned Northern Agricultural Residential (“NAR”) in accordance with Article V, Part V, Section 82 of the Cecil County Zoning Ordinance (the “Ordinance”).

Section 82 of the Ordinance provides:

A retirement housing complex may be permitted as a Special Exception in the NAR, SAR, RR, LDR, ST, VR, UR and MH Zones provided:

1. Density shall not exceed the base density for the zoning district.
2. The minimum area shall be one and one-half acres.
3. There shall be off-street parking as required in Article XIV.

In determining whether to grant an application for a Special Exception the Board must consider Section 311 of the Ordinance, which states:

No special exception shall be approved by the Board of Appeals after considering all facts in the case unless such Board shall find:

1. Such use or any operations thereto will not be detrimental to or endanger the public health, safety, or general welfare.
2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor substantially diminish or impair property values in the neighborhood.
3. The establishment of the use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone.
4. The use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements.
5. The use shall not adversely affect critical natural areas or areas of ecological importance.
6. The use shall, in all other respects, conform to the applicable regulations of the zone in which it is located.
7. That the particular use proposed at the particular location proposed, would not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. *Schultz v. Pritts*, 291 Md.1 (1981).
8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.

Article XVII, Part II, Section 311, Cecil County Zoning Ordinance.

John McGlothlin testified on behalf of the Applicant and was represented by Michael Leaf, Esq. Mr. McGlothlin testified that the special exception is necessary in order to expand the existing assisted living facility from 8 beds to 15 beds. Applicant currently has a waiting list of potential residents. The proposed addition would be approximately 1,900 square feet and would not be visible from the road. The facility has at least two employees on staff at all times with overlap during shift changes. Off-street parking is provided at the Property and Mr. McGlothlin testified

that the parking lot is never full as there are more parking spaces available than there are people to use the spaces. Applicant has been approved by the County for 15 residents on the currently existing septic system; however, there is room for an upgrade of the septic system should such a need arise. Applicant will add an additional exterior light near the addition. There are good lines of sight at the point of entrance to the Property, and Mr. McGlothlin testified that the additional residents should have minimal impact on traffic to and from the Property. Applicant has never received a complaint from any neighboring property owners regarding the assisted living facility. Mr. McGlothlin further testified that the expense of the addition will be approximately \$300,000.00. Further, Applicant requested that any approval of the special exception not be conditioned on Applicant's continued operation of the business and the property owner's continued ownership of the Property. Mr. McGlothlin testified that the existence of these conditions on the allowance of the proposed use could create difficulties in the procuring of necessary financing related to the addition as well as myriad issues should Applicant decide to sell the facility to a third party at some point in the future. Counsel for Applicant then provided to the Board two prior opinions where conditions such as those recommended by the Planning Commission were not imposed on assisted living facilities.

No further witnesses testified in favor or in opposition to the application.

Clifford Houston of the Cecil County Department of Planning and Zoning testified that the Planning Commission recommended approval of the special exception for so long as the Applicant operates the business and the property owner owns the Property.

Pursuant to Section 311 of the Ordinance, the Board finds as follows:

1. The special exception is not detrimental or an endangerment to the public health, safety, or general welfare. Applicant currently provides a necessary service related to the

housing and care of seniors in an assisted living facility. No evidence was presented indicating that the currently operating facility constitutes a danger to the public health, safety or general welfare and the Board does not find that an expansion of the facility from the 8 beds currently in use to the 15 proposed beds would create such a danger.

2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, or substantially diminish or impair property values in the neighborhood. The business use does not create pollution in the form of noise, light, or particulate matter. Applicant testified that there have been no complaints from neighboring property owners during the period in which the assisted living facility has operated at its current capacity. The Board finds that, given the scope of the proposed expansion, the proposed use will not cause injury to the peaceful use and enjoyment of other property in the neighborhood nor will it substantially diminish or impair property values in the neighborhood.

3. The use will not impede the normal and orderly development and improvement of the surrounding properties for uses permitted in the zone. The Board does not find that the expansion of the assisted living facility is an impediment to the preservation of the character of the area or to the reasonable and orderly residential development permissible within the zone. The proposed expansion will not change the character of the Property or contribute to an increase in traffic that would alter the character of the neighborhood.

4. The proposed use will not overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements. No evidence was presented indicating that the proposed use would contribute to an increased burden upon public facilities or municipal services.

5. The continued use will not adversely affect critical natural areas or areas of

ecological importance. The Property is not located in a Critical Area District.

6. The proposed use will, in all other respects, conform to the applicable regulations of the zone in which it is located. The Board finds that this portion of the NAR is primarily a mix of agricultural and residential uses. Based upon the evidence presented, the Board finds that the expansion of the currently existing assisted living facility as contemplated by Applicant is not inconsistent with these neighboring uses.

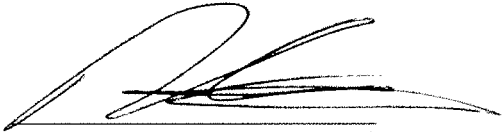
7. The particular use proposed at the particular location proposed will not have any adverse effects above those inherently associated with such special exception use irrespective of its location in the zone. *Schultz v. Pritz*, 291 Md. 1 (1981). The Board finds that, because of the residential density of the zone and the nature of the activities undertaken in the area, the impact of Applicant's proposed use in this particular area of the NAR zone is no different than the impact of the operation of a home occupation in other areas of the NAR zone.

8. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets. No evidence was presented evincing issues related to traffic and parking.

9. The use is not contrary to the objectives of the Comprehensive Plan for the County. The special exception is presumptively valid and the Board finds nothing in the record to indicate that the proposed use is contrary to the objectives of the Comprehensive Plan.

For the reasons stated above, by unanimous vote, the Board is satisfied that the requirements of Article XVII, Part II, Section 311, of the Ordinance have been met and the application for special exception under Section 82 is therefore **APPROVED** without conditions.

7/23/12
Date


Mark Saunders, Acting Chairperson

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

MEET. MONTH: JUNE 2013
 FILE NO. 3651

- THIS REQUEST IS FOR:
 SPECIAL EXCEPTION RENEWAL
 SPECIAL EXCEPTION
 VARIANCE
 APPEAL

(Handwritten initials)

DATE FILED: 5/16/13
 AMOUNT PD: \$250.00
 ACCEPTED BY: AB C/11/8/13
Allcare Assisted Living LLC

MAY 16 2013

A. APPLICANT INFORMATION

Mail To →

Allcare Assisted Living, LLC CECIL COUNTY OFFICE OF
 APPLICANT NAME - PLEASE PRINT CLEARLY PLANNING & ZONING MD 21918
405 McCauley Road, Conowingo ADDRESS CITY STATE ZIP CODE
 APPLICANT SIGNATURE John McNothlin call 410-838-2333 PHONE NUMBER
Carlene M. McNothlin

B. PROPERTY OWNER INFORMATION

Mail To →

McGlothlin Properties, LLC
 PROPERTY OWNER NAME - PLEASE PRINT CLEARLY
405 McCauley Road, Conowingo, MD 21918
 ADDRESS CITY STATE ZIP CODE
 PROPERTY OWNER SIGNATURE John McNothlin Carlene M. McNothlin 410 658 3846 PHONE NUMBER
Carlene M. McNothlin

C. PROPERTY INFORMATION

1505 Belvidere Road, Port Deposit 21904
 PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER
 24 13 317 3A 2.466 NAR
 TAX MAP # BLOCK PARCEL LOT # #ACRES ZONE

D. PURPOSE OF APPLICATION - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

Applicant requests a Special Exception for a Retirement Housing Complex to allow expansion of an existing assisted living facility to a total of 15 beds for residents

E. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.

F. LAND USE DESIGNATION

Is property in the Critical Area? YES X NO
 If yes, Pertinent provision of the Chesapeake Bay Critical Area Program:
 Is property in the 100 year Floodplain? YES X NO
 Is property an Agricultural Preservation District? YES X NO

If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

G. PROVISION OF ZONING ORDINANCE: Section 82

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: N/A

I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME - Please fill out the following information:

Will unit be visible from the road? If yes, distance:
 Will unit be visible from adjoining properties? If yes, distance:
 Distance to nearest manufactured home: Size/Model/Year of Unit:
 Number of units on property at present time: