BOARD OF APPEALS CASE NO. 4602	*	BEFORE THE
APPLICANTS: Robert W. & Patricia Smith	*	ZONING HEARING EXAMINER
REQUEST: Special Exception for a personal care boarding home with up to 15 boarders; 1199 Hanson Road, Edgewood	*	OF HARFORD COUNTY
	*	Hearing Advertised
	*	Aegis: 11/27/96 & 12/4/96
HEARING DATE: January 15, 1997	*	Record: 11/29/96 & 12/6/96

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Robert W. and Patricia Smith, appeared before the Hearing Examiner requesting a Special Exception to Section 267-53(F)(8) of the Harford County Code, to permit a personal care boarding home with a maximum 15 boarders.

The subject parcel is owned by Robert K. and Lillie C. Smith. The parcel is located at 1199 Hanson Road in the First Election District. The parcel is also identified as Parcel No. 972, in Grid 3-D, on Tax Map 65. The parcel contains .78 acres, more or less, all of which is zoned R1.

The first witness to testify on behalf of the Applicants was Linda Stevens, Nursing Director for the Harford County Health Department. Ms. Stevens testified that she had been overseeing the licensing of personal care boarding homes for the past 7 or 8 years. The witness said she has inspected the dwelling at 1199 Hanson Road and stated that the property can adequately serve 14 boarders. The witness went on to testify that the level of care offered by the Applicants is exceptionally good. Ms. Stevens said she believed there is a need for personal care boarding homes similar to the one operated by the Applicants and she noted that there are never vacancies at licenses personal care boarding homes and that there is often waiting lists at some of the facilities.

Ms. Stevens, further, testified that her office is required to conduct inspections at personal care boarding homes, and she noted that her inspection does not deal with compliance with fire regulations, plumbing or electrical codes, etc.

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Mrs. Patricia Smith appeared and testified that she and her husband reside at 1199 Hanson Road. She said they are requesting a Special Exception for a personal care boarding home for a maximum of 14 boarders. She said that the residents of the personal care boarding home are primarily elderly, but they also care for younger people who can no longer live alone because of accident or illness. The witness said that her home is 2 years old, is approximately 2,700 square feet in size, and has 6 bedrooms. Mrs. Smith said that in addition to herself and her husband, they employ 3 other persons in the home and the boarders in the home receive 24-hour supervision. She said 1199 Hanson Road is connected to public water and sewer and has adequate space for 14 boarders. The Applicant said she anticipates the possible hiring of additional employees if the Special Exception is granted and she noted that adequate parking provided on the site.

Mrs. Smith went on to testify that she has lined up contractors to install a sprinkler and alarm system if she received approval for the boarding home and she acknowledged she will comply with the requirements of the Health Department and the Department of Inspections, Licenses & Permits. The witness confirmed that she has had residents in the home since 1994 and that she and her husband have never tried to hide the fact that they were operating a personal care boarding home and that they have been seeking to obtain the necessary approvals all along.

The next witness to testify was Denis Canavan, who was accepted as an expert qualified to testify and give opinions in matters of planning, zoning and land use. Mr. Canavan testified that he is familiar with the subject property, as well as the exhibits submitted in the present case and that he has personally visited the site. He said the property at 1199 Hanson Road is improved by a single-family one-story structure, which contains .78 acres, m/l. Mr. Canavan went on to testify that the facility described by the Applicant falls within the definition of personal care boarding home contained in the Harford County Zoning Code, and that the proposed personal care boarding homes are consistent with the Master Land Use Plan. He said the Applicant proposed use is in conformance with the density factor of the Code and that adequate off-street parking is provided.

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Mr. Canavan explained that granting the Special Exception would be consistent with good planning and zoning practices and noted that the Special Exception in the R1 district for a personal care board homes is allowable. He also noted that because of the age and physical condition of the residents, it would not be anticipated that a substantial traffic increase would result from the proposed use and he stated that the proposed use on the subject property would not impact surrounding properties in a way different than that ordinarily caused by personal care boarding homes.

Mr. Canavan reviewed the "Limitations, Guides and Standards" contained in the Harford County Zoning Code and said that all of the standards can be met. Mr. Canavan said he did not believe that limiting the number of boarders to 8 was warranted and noted that the requested density of 14 boarders is within the Zoning Code allowance. Mr. Canavan then narrated a video tape of the subject property and noted that he viewed the interior of the property and spoke with residents of the property and was convinced that the proposed density was not too intense and that the residents would be comfortable with the requested density.

Mr. Charles Dalton resides at 1113 Hanson Road, said that he is familiar with the personal care boarding home on the subject parcel and has never observed any problems generated by the activities. He said he did not anticipate any problems in terms of traffic, noise or any other reason and did not object to the Special Exception approval.

Ms. Mary Hagy said she is familiar with the Smith's personal care boarding home and that her mother and brother residing at the facility. Ms. Hagy said that her mother is 91 years of age and does not walk and needs 24-hour supervision. She said her brother is blind and slightly retarded and cannot live by himself. She said she is absolutely satisfied with the care that her mother and brother receive from the Applicants.

Mr. Anthony McClune, Chief of Current Planning Division of the Department of Planning and Zoning appeared and testified that the Staff recommended conditional approval, but that the number of boarders should be limited to 8.

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Mr. James Moore, appeared and said he is Chief of the Housing Services division of the Harford County Department of Inspections, Licenses and Permits. Mr. Moore testified that all personal care boarding homes should be inspected by the Department.

The last witness to testify was Deputy Fire Marshal Michael Bond. Deputy Bond said he first inspected the personal care boarding home on the subject property on September 14, 1995 and that he was first made aware of the use just prior to that inspection. He also testified that he conducted a fire safety survey on January 8, 1997 and he disputed the contention that sprinklers are not required until there are 5 residents in a home.

CONCLUSION:

The Applicants are requesting a Special Exception to operate a personal care boarding home pursuant to Section 267-53(F)(8), which provides:

> Personal-care boarding homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB and VR Districts, provided that:
>
> (a) The proposed use shall be located in a single-family detached dwelling.
>
> (b) The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.
>
> (c) A maximum density of one (1) boarder per two thousand (2,000) square feet of lot area shall be maintained.
>
> (d) Adequate off-street parking shall be provided.
>
> (e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.

The subject property contains .78 acres, more or less, which equates to 33,977 square feet. However, the area within the panhandle is not included within the lot area, pursuant to Section 267-22(D). Therefore, the actual lot area is 29,088 square feet, which would permit a total of 14 boarders. The Applicants have amended their application to request 14 boarders, which would requires a density of 28,000 square feet. Both Patricia Smith, one of the Applicants, and Denis Canavan testified that off-street parking is provided on the subject property and that additional parking can be located on a vacant adjoining lot.

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The Applicants do not intend to construct a new dwelling; therefore, the requirements of Section 267-53(F)(8)(e) are not applicable. The Applicants' expert witness also testified that the "Limitations, Guides and Standards" set forth in Section 267-9(I) can be met by the Applicants.

Therefore, it is the finding of the Hearing Examiner that approval of a Special Exception for a personal care boarding home on the subject parcel will not have a greater impact on the if located on the subject parcel than elsewhere in the zoning district and that the Applicants can comply with the "Limitations, Guides and Standards" set forth in the Code.

It is the recommendation of the Hearing Examiner that the requested Special Exception for a personal care boarding home on the subject parcel be approved, subject to the following conditions:

1. The total number of residents be limited to 14, contingent upon the Applicants obtaining the necessary approval and permits from the Health Department, the Department of Inspections, Licenses and Permits, and the State Fire Marshal's Office.
2. The Applicants shall submit a plan to the Health Department and the Office of the State Fire Marshal, indicating the layout of beds, emergency escape routes, bathroom facilities, eating facilities, etc.
3. The Applicants shall provide the Health Department with the names of individuals responsible for the care of the residents.
4. The Applicants shall provide adequate parking area for their personal vehicles and a minimum of 3 visitor spaces. Until the adjacent lot is developed, the Applicant may use that area for additional parking.
5. All requirements of the Health Department, State Fire Marshal's Office, and the Department of Inspections, Licenses and Permits shall be implemented within 45 days of the date this decision becomes final.

Date MARCH 6, 1997

L. A. Hinderhofer

L. A. Hinderhofer
Zoning Hearing Examiner