

BOARD OF APPEALS CASE NO. 4708

APPLICANT: Maryland Country Club, Inc.

REQUEST: Special Exception and variances to expand existing facility; 1335 MacPhail Road, Bel Air

HEARING DATE: June 25, 1997

BEFORE THE

ZONING HEARING EXAMINER

OF HARFORD COUNTY

Hearing Advertised

Aegis: 5/14/97 & 5/21/97

Record: 5/16/97 & 5/23/97

ZONING HEARING EXAMINER'S DECISION

The Applicant is The Maryland Country Club, Inc., doing business as the Maryland Golf and Country Club. The Applicant is requesting the following relief:

- A. Special exception approval pursuant to Section 267-51(A)(2) to operate a country club, golf club, tennis and swim club use on the subject property zoned AG, R1 and R3 as shown on the site plan.
- B. A variance from Section 267-34(C) Table II, Design Requirements for Specific Uses in the AG District to allow the use to be conducted with a building or use setback from an adjacent residential lot of less than 50 feet, (0 feet proposed) as shown on the site plan.
- C. A variance from Section 267-36(B) Table IV, Design Requirements for Specific Uses in the R1 District to allow the use to be conducted with a building or use setback from an adjacent residential lot of less than 100 feet, (0 feet proposed) as shown on the site plan.
- D. A variance from Section 267-36(B) Table VI, Design Requirements for Specific Uses in the R3 District to allow the use to be conducted with a building or use setback from an adjacent residential lot of less than 100 feet, (0 feet proposed) as shown on the site plan.
- E. If necessary, a variance from Section 267-34(C) Table II, Design Requirements in the AG District to permit a parcel with a minimum lot area less than 2 acres (.1 acre, more or less, proposed) to be used as a part of the use conducted on the subject property as shown on the site plan.

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- F. If necessary, a variance from Section 267-36(B) Table IV, Design Requirements in the R1 District to permit a parcel with a minimum lot area less than 5 acres (1.5 acres, more or less, proposed) to be used as a part of the use conducted on the subject property as shown on the site plan.
- G. A variance from Section 267-34(C) Table II Design Requirements in the AG District to allow the use to be conducted with a rear yard setback of less than 80 feet (0 feet proposed) as shown on the site plan.
- H. If necessary, a variance from Section 267-34(C) Table II Design Requirements in the AG District to allow the use to be conducted with a front yard setback of less than 50 feet (0 feet proposed), as shown on the site plan.
- I. If necessary, a variance from Section 267-36(B) Table IV Design Requirements in the R1 District to allow the use to be conducted on a lot with a minimum lot width at building line of less than 200 feet, (50 feet, more or less, proposed) as shown on the site plan.

The subject property is identified as Parcels Nos. 329, 731, 715, 208 and 184 on Grids 3E and 3F on Tax Map 49. The parcels are zoned AG, and R1 and R3 Urban Residential.

William E. Hughes, the General Manager of the Maryland Golf and Country Club, appeared and testified. He explained that the Club had been originally built in the early 1960's and that over the years thirteen (13) separate parcels comprising approximately 190 acres had been acquired by the Club for its use. He testified that the Club consisted of an 18 hole golf course, pool, tennis courts, golf practice facility and a clubhouse. He said that although the Club is a private organization, it is used by community service groups for dinners and other functions which are open to the public.

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Using the site plan introduced as Applicant's Exhibit No. 7, Mr. Hughes pointed out that many of the parcels which make up the subject property are unimproved and are used as a part of the golf course. No structures have been or will be erected on those parcels. He testified that although paper lot lines separate the parcels from one another, for all intents and purposes, the subject property is one parcel of land. He stated that, in theory, these parcels could be legally combined through the subdivision process which would satisfy the requested lot width and lot area variances. However, he testified that doing so would result in no real benefit to the Club and cause unnecessary expense.

Mr. Hughes, stated that the Club wished to construct an addition to its existing clubhouse. In planning the addition, the Club learned that the Department of Planning and Zoning classified the Club as a valid non-conforming use. As a result, the addition could not be constructed until the Club was brought into compliance with current zoning regulations. Mr. Hughes explained that the Club filed the instant case to accomplish that purpose. He stated that if the zoning request is granted and the addition is constructed, no change in the operations of the Club will take place.

Mr. Hughes testified that granting the requested relief will not harm anyone, since the Club has been operated without complaint for over 30 years. He pointed out that when the golf course was built, no residential properties were located nearby. Accordingly, the golf course was constructed to the property line of each parcel of the subject property. He said it would be impossible to move the golf course away from the property lines at this time and comply with the setback requirements. As a result, denial of the requested variances will result in practical difficulty to the Club.

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Denis Canavan, an expert land planner also appeared and testified. Mr. Canavan testified that he had been retained by the Applicant to analyze its special exception and variance requests for country club approval. He testified that he had reviewed the application, exhibits, Staff Report and had personally visited the subject property. Mr. Canavan stated that he agreed with the Staff Report that the use falls within the definition of "country club" contained within the Code. Mr. Canavan confirmed the Staff's conclusion that with the exception of the requested area variances, the Applicant's proposal meets or exceeds all of the requirements of the Code.

Mr. Canavan indicated that continued operation of the Club with the expanded clubhouse will be compatible with other uses permitted as of right in the AG, R1 and R3 Districts. Mr. Canavan testified that granting the special exception will not cause any adverse impact to surrounding properties. He pointed out that the Club had been in operation for over 30 years in harmony with surrounding uses and was a valid nonconforming use. Mr. Canavan also stated that he agreed with the Staff that each of the "Limitations, Guides and Standards" set forth in Section 267-9(l) of the Code were satisfied. Mr. Canavan further stated that based on his knowledge, experience and education, in his opinion, a country club operated from the subject property would not generate adverse effects significantly different in character or intensity from the effects inherent in the operation of a country club located elsewhere in the AG, R1 and R3 Districts.

Regarding the Applicant's variance requests, Mr. Canavan stated that the subject property was definitely unique in that the use was a collection of thirteen irregularly shaped parcels totaling 190 acres, which had been operated as a country club for more than 30 years. He indicated that, based on the testimony of Mr. Hughes that the golf course would have to be redesigned if the variances were denied, it was his opinion that denial of the variances would cause the Applicant practical difficulty. He indicated that it would serve no useful purpose to combine the separate parcels into one lot to avoid the variances from the minimum lot width and lot area requirements since they were all part of the existing golf course. Granting the requested variances will have no adverse impact since they would not change the operation of the existing, non-conforming golf course use.

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Mr. Anthony S. McClune, Chief of Current Planning for the Department of Planning and Zoning, summarized the Staff Report issued in this case. He testified that the Department felt that the subject property was unique in that it was an assemblage of several parcels upon which a nonconforming country club had been operated for more than thirty (30) years. Because the use of the country club will not change due to the construction of the addition to the clubhouse, the Department felt that granting the requested variances will have no adverse impact on neighboring properties and that the test for variances set forth in Section 267-11 had been met.

Furthermore, Mr. McClune testified that the Department was of the opinion that all standards for the special exception country club use set forth in the Code were met or exceeded by the Applicant. Accordingly, the Department recommended approval of the requested special exception as well.

No Protestants appeared in opposition to the Applicant's request.

**CONCLUSION:**

Section 267-53 (A)(2) of the Zoning Code provides as follows:

Country Clubs, Golf Clubs, Tennis and Swim Clubs. These uses may be granted in the AG, R, RR, R1, R2, R3, R4 and GI Districts, provided that:

- (a) No off street parking or loading area shall be located within any required yard or within 25 feet of any parcel boundary.
- (b) Off street parking and loading areas, swimming pools and tennis courts shall be screened from adjacent residential lots.
- (c) The principle access shall be provided from an arterial or collector road.
- (d) No more than 20% of land area upon which such a use is conducted may be located in the GI district.
- (e) Any outside lighting used to illuminate a use permitted under this section shall be designed, installed and maintained in a manner not to cause a glare or reflection on adjacent residential lots.

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Under Section 267-51 of the Zoning Code, special exceptions may be granted when determined to be compatible with the uses permitted as of right in the appropriate district by the Code.

Section 267-34(C) Table II, Design Requirements for Specific Uses in the AG district requires a minimum building or use setback from an adjacent residential lot of 50 feet.

Section 267-36(B) Table IV, Design Requirements for Specific Uses in the R1 District requires a minimum building or use setback from an adjacent residential lot of 100 feet.

Section 267-36(B) Table VI, Design Requirements for Specific Uses in the R3 District requires a minimum building or use setback from an adjacent residential lot of 100 feet.

Section 267-34(C) Table II, Design Requirements for Specific Uses in the AG District requires a parcel with a minimum lot area of 2 acres.

Section 267-36(B) Table IV, Design Requirements for Specific Uses in the R1 District requires a parcel with a minimum lot area of 5 acres.

Section 267-34(C) Table II, Design Requirements for Specific Uses in the AG District requires a rear yard setback of 80 feet.

Section 267-34(C) Table II, Design Requirements for Specific Uses in the AG District requires a front yard setback of 50 feet.

Section 267-36(B) Table IV, Design Requirements for Specific Uses in the R1 District requires a minimum lot width at building line of 200 feet.

The Code, pursuant to Section 267-11, authorizes the granting of variances provided the Board finds that:

1. By reason of the uniqueness of the property or topographical conditions literal enforcement of Part 1 will result in practical difficulty or unreasonable hardship; and
2. The variance will not be substantially detrimental to adjacent properties and will not materially impair the purposes of this Part 1 or the public interest.

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Under Maryland law, the special exception use is part of the comprehensive zoning plan sharing the presumption, that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely effected and whether the use in a particular case is in harmony with the general purpose and intent of the plan. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981).

While the applicant in such a case has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements of the zoning code, he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely effect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material; but if there is not probative evidence of harm or disturbance in light of the nature of the zoning involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for special exception is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-551 (1973). The appropriate standard to be used in determining whether a requested special exception use should be denied is whether there are facts and circumstances that show the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. See Schultz at 432 A.2d 1327.

Such facts and circumstances must be strong and substantial to overcome the presumption that the proposed use be allowed in the district. Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716, 724 (1974).

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In the recent case of Mossburg v. Montgomery County, 107 Md. App. 1, 666 A. 2d 1253 (1995), the Court of Special Appeals had occasion to restate and clarify the law in Maryland regarding special exceptions. There the Court found that the Board of Appeals of Montgomery County improperly denied a special exception for a solid waste transfer station in an industrial zone. In reversing the Circuit Court, which upheld the Board's decision, the Court of Special Appeals found that the decision to deny the special exception was not based on substantial evidence of adverse impact at the subject site greater than or above and beyond impact elsewhere in the zone and, therefore, the decision was arbitrary and illegal. There the Court said:

The question in the case *sub judice*, therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, *i.e. greater here* than they would generally be elsewhere within the areas of the County where they may be established... In other words, if it must be shown, as it must be, that the adverse effects at the particular site are greater or "above and beyond", then it must be asked, greater than what? Above and beyond what? Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere. (emphasis supplied) *Id.* at 666 A.2d 1257.

Thus, the Court of Special Appeals emphasized that once the applicant shows that it meets the requirements for the special exception under statute, the burden then shifts to the protestants to show that impacts from the use at a particular location are greater at this location than elsewhere. If the protestants fail to meet that burden of proof, the requested special exception must be approved.

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The uncontradicted evidence presented shows that the Applicants met their burden of proof to justify the granting of the requested special exception. The Applicant meets or exceeds every Code requirement regarding the proposed golf course with the exception of the area variances. The Club has been operated for over 30 years without adverse impact.

The evidence presented also shows that any impacts from the Club would not be significantly different in character or intensity from the effects inherent in the operation of a country club irrespective of its location in the AG, R1 and R3 zones. No change in the operation of the Club will take place if the Applicant's request is granted. The only reason for the special exception and variance requests is to bring the valid non conforming use into compliance with current zoning regulations. Thus the tests set forth in Schultz and Mossburg were met here.

The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994) wherein the court stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

An example of uniqueness is found in the use variance case of Frankel v. Mayor and City Council, 223 Md. 97, 104 (1960), where the court noted: "He met the burden; the irregularity of the...lot...that it was located on a corner of an arterial highway and another street, that it is bounded on two sides...by parking lots and public...institutions, that immediately to its south are the row houses..."

Id. at 638 A.2d 1181.

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It is generally recognized that a confluence or combination of factors may be considered in determining whether a property is unique. Kilmartin v. Board of Zoning and Adjustment, 579 A.2d 1164 (D.C. App. 1990). The courts have also held that unique characteristics of the property that justify a variance are not limited to those that inure to the land in particular, Capitol Hill Restorations Society v. District of Columbia Board of Zoning and Adjustment, 534 A.2d 939 (DC 1987), but that the use of adjoining and surrounding lands may also be considered. Valley View Civic Association v. Zoning Board of Adjustment, 462 A.2d 637 (DC 1983). Uniqueness does not require a property to be the only property with these characteristics. However, the conditions must be sufficiently rare so that, if all similarly situated properties in the district receive variances, the district would remain materially unchanged. Rathkopf, The Law of Planning and Zoning, Section 38.03 (1988).

The Court of Appeals of Maryland in McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973) held that the following criteria are to be used for determining whether "practical difficulty" has been established:

1. Whether strict compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the use of the property for a permitted purpose or render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

An area variance may be granted where the applicant demonstrates practical difficulty or undue hardship or both.

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The uncontradicted evidence presented shows that the Applicant has met its burden of proof. The evidence shows that the subject property is a valid non-conforming country club. The use encompasses 13 separate parcels with three (3) separate zoning classifications, AG, R1 and R3. Most of the property is open space golf course. For all intents and purposes, the Club is one parcel of land. All of these factors make the subject property unique.

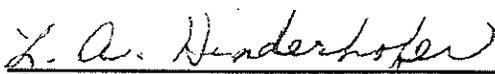
Under McLean v. Soley, denial of the variance would result in practical difficulty to the Applicant. Here, denial of the variance would unreasonably prevent the use of the subject property for a permitted purpose, i.e., a country club. Mr. Hughes testified that it would be impossible to redesign the golf course in order to meet the current setback requirements. Furthermore, there is no justification to combine the parcels into one lot and satisfy the minimum lot width and area requirements when the parcels which are the subject of the variance requests have no structures erected upon them and are a part of the golf course use. Under all these circumstances, it would be unnecessarily burdensome to require the Applicant to comply with the current zoning regulations.

The uncontradicted evidence indicated that the requested variances will not be detrimental to adjoining properties and will not materially impair the purpose of the Code. Thus all elements of Section 267-11 are met.

Therefore, it is the recommendation of the Hearing Examiner that the requested special exception for the country club use and area variances be granted, subject to the following conditions:

1. The Applicant obtain all necessary permits and inspections for any construction proposed on site.
2. The proposed improvements be constructed in general compliance with the Applicant's site plan.

Date: JULY 1, 1997

  
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L. A. Hinderhofer do  
Zoning Hearing Examiner