

**BOARD OF APPEALS CASE NO. 5045**

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**BEFORE THE**

**APPLICANT: 1901 Emmorton Road LLC**

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**ZONING HEARING EXAMINER**

**REQUEST: Special Exception and variance to construct a 62 foot high building and to allow ingress & egress from a private drive on an adjacent parcel; 1901 Old Emmorton Road, Bel Air**

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**OF HARFORD COUNTY**

**HEARING DATE: June 28, 2000**

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**Hearing Advertised**

**Aegis: 4/19/00 & 4/26/00**

**Record: 4/21/00 & 4/28/00**

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**ZONING HEARING EXAMINER'S DECISION**

The Applicant, 1901 Emmorton Road, LLC, is seeking a variance pursuant to Section 267-36B, Table V, of the Harford County Code to permit a structure higher than the 45 foot/3 story height (62 feet proposed, 4 stories; and a special exception pursuant to Section 267-53K(1) of the Code to allow a private drive to be used by ingress and egress by an adjacent Business District parcel through the subject R2/Urban Residential District parcel for use in common by both parcels.

The subject property is located at 1901 Old Emmorton Road approximately 400 feet south of Patterson Mill Road and is more particularly identified on Tax Map 56, Grid 1D, Parcel 578. The property consists of 9.75 acres more or less, is zoned R2 Urban Residential and is entirely within the First Election District.

C. Dudley Campbell appeared and qualified as an expert in site planning and land development. It was explained that Board of Appeals Case No.4932 granted a special exception use on this property for construction of an assisted living facility. Mr. Campbell first discussed the request for height variance. Proposed is the addition of an in-ground basement floor that, because of the slope of the land would appear much like a walkout basement on a residential home. Since the building is setback 500 feet from the road, the appearance of the building will be the same with or without the additional basement floor. To the rear of the building is Natural Resource District which will remain undisturbed and which serves to screen from view the exposed rear portion of the basement walkout.

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Moreover, the property directly to the rear is owned by Harford County and is to become athletic fields and ultimately a school site. He did not feel such a use would be impacted at all by the grant of the variance. Mr. Campbell explained that the building will need maintenance equipment and supplies and the basement with outside access, would provide an ideal location for such a use. If the variance was not granted, the maintenance uses could not be located in the basement and additional square footage would need to be added to the footprint of the building to locate this essential use. This would create a practical difficulty for the Applicant requiring more cost and would also have an adverse impact on the sensitive natural features of the property including more extensive use of land and more impervious surface area.

The witness then addressed the request for special exception. The Applicant proposes to create an area approximately 50 feet in length and running approximately 250 feet in length along the common property line with the B3 property to the south of the subject parcel. The witness indicated that the State Highway Administration, The Harford County Department of Public Works and the Department of Planning and Zoning have recommended a common drive for these properties.

Mr. Anthony McClune, Chief of Current Planning for the Harford County Department of Planning and Zoning testified next. The witness stated that the Department supported the requests for both the variance and the special exception. Mr. McClune testified that the property is unique due to the presence of sensitive natural features, the existing vegetation to the rear and north of the subject property and because the grade of the property will not allow the building to be seen from the County owned property in the rear. The subject parcel is surrounded by B3 properties and accesses Maryland Rte. 924. Other commercial properties in Harford County share a common drive and it is often the safest means of providing ingress and egress to a group of properties. Mr. McClune did not feel that there would be any adverse impacts associated with the requested variance or the requested special exception. The witness discussed in detail the provisions of Sec. 267-9I of the Code entitled Limitations, Guides and Standards and again opined that the requested special exception would not result in any adverse impacts related to any of the conditions set forth in that section.

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There were no persons who appeared in opposition to the request.

### **Conclusion and Recommendation:**

Section 267-36(B), General Regulations, Table V, Transient Housing, requires a maximum building height of 45 feet and no more than 3 stories. The Harford County Code, pursuant to Section 267-11 allows area variance provided the Board finds:

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

Section 267-53K(1) of the Harford County Code provides:

“Accessory parking areas, driveways and private roads. These uses may be granted in any district to serve a use permitted and located in another district but not permitted in the subject district, provided that:

- (1) The parking area, driveway or private road shall be accessory to and for the use of one (1) or more agricultural, residential, business or industrial uses located in an adjoining or nearby district.”

The Hearing Examiner, based on the expert testimony of both Mr. Campbell and Mr. McClune, concludes that the subject property is topographically unique, that the requested height variance will have no adverse impact on adjoining properties or impair the public health, safety or welfare or the purposes of the Zoning Code. The hearing Examiner recommends approval of the variance.

As to the request for special exception, the standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

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**“...The special exception use is a 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 facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.**

**Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect 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. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).**

**The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:**

**“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.**

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There was no evidence presented that the common driveway proposed would have any adverse impacts or that a common driveway at this location would have any impacts different than or greater than a common driveway on any other commercially used property. In fact, three government agencies have reviewed the plan and determined that there could be substantial safety issues if the special exception were not granted.

For the foregoing reasons, the Hearing Examiner recommends approval of the request for special exception.

Date AUGUST 15, 2000

William F. Casey  
Zoning Hearing Examiner