

**APPLICANT:**  
408 Realty LLC

**REQUEST:** Special exception to permit  
a personal care boarding home in the R1  
District

**HEARING DATE:** July 17, 2013

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**

**Case No. 5802**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** 408 Realty LLC

**LOCATION:** 408 Sassafras Court, Be Air  
Tax Map: 56 / Grid: 3C / Parcel: 489 / Lot: 12  
First (1<sup>st</sup>) Election District

**ZONING:** R1 / Urban Residential District

**REQUEST:** A special exception, pursuant to Section 267-88F(6) of the Harford County Code, to permit a personal care boarding home in the R1 / Urban Residential District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

For the Applicant first testified Jennifer Holahan, who identified herself as a member of 408 Realty LLC, which is the owner of 408 Sassafras Court. Two elderly residents are currently cared for at the subject property by Awakenings of Bel Air, a limited liability company also owned by Ms. Holahan.

The subject property, which is approximately one-half acre in size and is improved by a one-story, ranch-type dwelling with a walk-out basement, is located in the Valley View subdivision, south of Bel Air. The Applicant purchased the property in March 2012.

Ms. Holahan described the assistance which is given to the residents by her facility. Residents require an individual to cook meals, administer and supervise medication, wash dishes, and care for them in their daily activities. Ms. Holahan is a medication technician certified to provide medication to her residents.

## **Case No. 5802 – 408 Realty LLC**

The Applicant had withdrawn a previous application for approval of a personal care facility for 9 residents as the Department of Planning and Zoning had indicated that the request would not be in keeping with the residential character of the neighborhood. The Applicant subsequently applied for a license from the State of Maryland to care for two individuals and received that license in July 2012. Such a limited operation does not require Harford County zoning approval.

The Applicant has two employees who, in addition to Ms. Holahan, care for the residents on a 24 hour a day, 7 day a week basis. There is never more than one caregiver at the home except during change-over periods. No one lives at the home other than the two residents. The Applicant is requesting approval for a third resident. If the relief requested is granted, accordingly, no more than three residents will reside at the property. One caregiver also spends each night at the facility. All caregivers have necessary certifications from the State of Maryland.

The witness identified the two residents who now reside on the subject property and who are cared for by Awakenings. One resident is 100 years old and is legally blind and deaf. He can feed himself, but requires daily care. The other resident is 94 years old and requires similar care. Both residents are private pay. The residents at the facility must be in need of assistance or they will not be accepted. Neither of the present residents can drive. Ms. Holahan will not accept anyone under the age of 55. If a resident becomes bedridden that resident will be discharged to a nursing home.

Occasionally, family members will visit a resident, and sometimes there are two or three people on site visiting a resident.

Ms. Holahan indicated she has not received any complaints about her current operation. If granted permission to have a third resident Ms. Holahan plans to make no changes to the exterior or interior of the home. She currently has an open bedroom which will be used by the third resident. She would hire no additional employees and she will not change staffing. The facility has no signs or plans for signage. The house appears to be a typical residential property.

A doctor visits the home once a month to check the residents, and a visiting nurse comes every 45 days. The State of Maryland inspects the facility once a year without prior notice. Occasionally UPS makes deliveries.

Ms. Holahan described the environment of the house as being very quiet, with no greater traffic than most residences receive or generate. She does not believe any adverse impact will result if the request to have a third resident is granted. Ms. Holahan reaffirmed that she will not live at house and she will not take up residence at the house if her request is granted. She believes there is a need for this type facility in Harford County. She has no plans to expand beyond three residents.

## Case No. 5802 – 408 Realty LLC

On cross-examination Ms. Holahan testified that she will not in the future ask for approval to have 9 residents. She does not believe the neighborhood would accept that.

Ms. Holahan testified she has not taken money out of the business as of yet, but she looks upon it as potentially profit-making. She gets referrals mainly by word-of-mouth. The home has a total of four bedrooms. She is at the home every day and spends many nights there, sometimes 12 hours per day, but she neither sleeps nor resides there.

Next testified Laurie Ballard, of 411 Sassafras Court, Bel Air, who testified she is a registered nurse who cares for elderly people. She lives three homes away from the subject parcel and she can see the property from her residence. She is not a close personal friend of Ms. Holahan. She described the home as being very well maintained and it has never appeared as anything but a private residence. The operation has not bothered her, and she has no objection to the request. Ms. Ballard stated that, by personal experience, she understands how difficult it is for elderly individuals to find appropriate care facilities.

Ms. Ballard stated that another house in the neighborhood was a problem, and a number of disabled people live there and are transported to and from the house on a daily basis by bus. One other group home located in her immediate neighborhood is much more of a problem to the area residents than the subject property.

Next for the Harford County Department of Planning and Zoning testified Shane Grimm. Mr. Grimm verified that no County permits are required for two residents; however, special exception approval for a personal care boarding home is required for three residents or more.

Mr. Grimm addressed the issue of private covenants and restrictions. Harford County Planning and Zoning, according to Mr. Grimm, does not enforce or even recognize private covenants and restrictions in the zoning process.

Mr. Grimm indicated that the Harford County Health Department has given conditional approval to the Applicant for this use.

Upon questioning Mr. Grimm stated that at least two other facilities which house non-family members are in the neighborhood. According to Mr. Grimm they are Federally funded facilities for a protected class, and the Department of Planning and Zoning has no authority to regulate those facilities.

The Department of Planning and Zoning Staff Report recommends approval of the requested special exception with conditions, stating, *intra alia*:

## Case No. 5802 – 408 Realty LLC

“The Applicant is proposing to establish a personal care boarding home for 3 residents in an existing dwelling. The Applicant currently provides care for 2 boarders residing in the dwelling. There are no other permanent residents living in the dwelling, other than the boarders. No additional parking spaces or changes to the exterior appearance of the dwelling are necessary to accommodate the proposed use.”

The Staff Report of the Department of Planning and Zoning did not mention the other day care facilities, personal care boarding homes or group homes within the neighborhood, nor was Mr. Grimm able to describe them in any detail.

Next, in opposition, testified Lynn Coles, who resides at 406 Sassafras Court. Ms. Coles moved to the neighborhood in December 2012, which she found to be a quiet area, populated by good families. However, for the past year and one half the subject property has been operated as an assisted living facility, to which she objects. She does not believe the facility should be in the neighborhood, especially if there are plans to grow. Other approved personal care boarding homes are in areas which are less densely populated and, for the most part, not located in subdivisions. She believes the design, layout and population of Valley View is completely different from the areas in which other personal care boarding homes are located (identified by Ms. Coles as Board of Appeals Case Nos. 4602, 4731 and 5441). She is also concerned that the Department of Planning and Zoning will not properly enforce the special exception, if granted. She believes the use will be adverse to her interests and to the other residents in the neighborhood.

Also, offered into evidence as “Protestants’ Exhibit No. 9”, was a set of Declaration of Restrictions, Section V, Valley View.<sup>1</sup> The Restrictions were offered by the opponents as evidence of their assertion that the private covenants and restrictions of Valley View do not allow the requested personal care boarding home.

Next in opposition testified James Reyerson, of 2106 Deadora Drive, Bel Air. Mr. Reyerson does not want businesses within his residential community, and is adamantly opposed to the use.

Next in opposition testified Joe Patterson, 2017 Cypress Drive, Bel Air. Mr. Patterson believes too many businesses already exist in the neighborhood. At least one day care facility and at least two other personal care boarding home facilities are located in Valley View. He feels that the accumulation of these business uses will adversely affect property values of the residents of Valley View, and their quality of life.

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<sup>1</sup> Protestants’ Exhibit No. 9 is not a recorded document and, in fact, does not include original signatures.

## **Case No. 5802 – 408 Realty LLC**

Next in opposition testified Peggy Ballard, of 2101 Cypress Drive, Bel Air, who identified herself as a 43 year resident of Valley View. Ms. Ballard identified two day care facilities and three group homes already located within the neighborhood. She feels there are too many facilities in the neighborhood and does not feel the request should be granted as it would simply add to the burden already borne by the neighborhood. The witness feels that her community has been targeted by assisted living and day care facilities.

Next in opposition testified James Rapp, of 407 Sassafras Court. Mr. Rapp states that other personal care boarding homes are generally located in different types of areas and not in established communities such as Valley View. Mr. Rapp is concerned with the precedent that the approval of the special exception at this site will establish. He identified a group home located at 410 Sassafras Court, or two houses down from Ms. Coles. He believes that it is a Federally funded group home, and that property generates a significant amount of traffic.

Received post hearing and considered as argument is a letter from Ms. Lynn A. Coles, which summarizes the Protestants' testimony and position. Primarily, the Protestants argue that together with the other existing group homes and day care facilities in the neighborhood, the Applicant's proposed facility creates an adverse impact sufficient to justify denial.

### **APPLICABLE LAW:**

The Applicant is requesting a special exception to Section 267-88F(6) of the Harford County Code which states:

- “(8) *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) boarded per two thousand (2,000) square feet of lot area shall be maintained.*
  - (d) *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.*
  - (e) *Provisions of Chapter 199 of the Harford County Code, as amended, must be met.*

## **Case No. 5802 – 408 Realty LLC**

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

For the past year or more this one-story rancher, located on a one-half acre lot in the subdivision of Valley View, has been the home of two elderly residents who have been cared for by the principal of the Applicant, Jennifer Holahan, and its employees. At least one caregiver has been on site at any one time, and no other individual resides or sleeps in the home. Since both residents are at or approaching 100 years of age, it is unlikely that they have caused or been the source of any disturbance to the neighborhood. In fact, there is no testimony of any nature that the use of the subject parcel has created any noticeable impact to the Valley View subdivision, or its residents.

The Applicant now seeks permission for a third resident. Two residents are allowed as of right, but having a third resident requires special exception approval for a personal care boarding home. Initially, it does not seem likely that a change from two elderly residents to three elderly residents would significantly change the impact of the personal care boarding home on the neighborhood.

In fact, the neighbors do not claim that it will. The neighbors are concerned, however, and perhaps rightfully so by the, to them, unacceptable numbers of assisted living and daycare facilities which already exist in the neighborhood. Testimony was that there now exist a total of four or five other such facilities in the immediate vicinity of the subject property, all located within the Valley View subdivision. The neighbors expressed extreme annoyance and frustration with the operations at some of the existing facilities, and described clear impacts from one or more of those facilities.

Overriding all of this is the neighbors' vehement objection to any sort of commercial operation within their purely residential subdivision. The addition of another such facility would only, in the neighbors' eyes, increase commercialization and potential for impact, and exacerbate what they already see as a harmful and unwanted intrusion.

The neighbors potentially have a good argument that the addition of another personal care boarding home to a community that already has a number of like or similar uses would create an adverse cumulative impact. However, the neighbors must first show with some degree of persuasiveness that the proposed personal care boarding home itself, standing alone, has an adverse impact. This they are unable to do.

## Case No. 5802 – 408 Realty LLC

Traffic has not been identified as an issue with the proposed use, either now or projected with the addition of a third resident; noise has not been identified as a problem; deliveries have not been identified as a problem; there are no planned changes to the exterior of the home which would make the home appear as something other than a residence; there are no changes to the parking or driveway. Few visitors and employees enter or leave the house. No signage exists or is planned.

While there will be an occasional delivery, no evidence was presented that the deliveries would be any greater than what would normally be made to a single-family residence. While there will be individuals coming and going from the home during employee shift changeover, this traffic should be less than what most single family homes would exhibit.

In short, there is simply nothing about the proposed operation of the residence that will, in and of itself, have any impact whatsoever on the neighborhood. The dwelling will continue to appear as any other single-family home in the area. If there were something which sets this home apart, that is, a characteristic of the personal care boarding home operation which is adverse, unwanted or somehow offensive to the neighborhood, then there may be sufficient evidence to deny based on the accumulation of such impacts in the neighborhood. However, that finding cannot be made. There is simply no identified negative impact of any nature that will be generated by the proposed personal care boarding home for three residents.

The concerns of the neighbors are well expressed and honestly felt, and it is easy to sympathize with them. The Harford County Zoning Code is clear, however, that given the facts as presented the special exception must be granted.

The use clearly meets the specific requirements of Section 267-88F(6), as follows:

- (6) *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:*

The subject property is zoned R1.

- (a) *The proposed use shall be located in a single-family detached dwelling.*

The proposed use is 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.*

This requirement is met.

**Case No. 5802 – 408 Realty LLC**

- (c) *Maximum density of one (1) boarded per two thousand (2,000) square feet of lot area shall be maintained.*

With three boarders, this density requirement is easily met.

- (d) *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 provision is not applicable.

- (e) *Provisions of Chapter 199 of the Harford County Code, as amended, must be met.*

Chapter 199 imposes County standards for personal care boarding home operators, which must be complied with, in order for a County license, as opposed to a zoning permit, to be issued. These requirements include fire safety standards and certain standards for interior improvements, among others. These standards must be complied with prior to the issuance of the appropriate license by Harford County, and compliance will be made a condition of this approval.

The Applicant, accordingly, meets the specific standards for a personal care boarding home special exception. The Applicant, furthermore, meets all the requirements of Harford County Code Section 267-9I, Limitations, Guides and Standards, as follows:

*“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:*

- (1) *The number of persons living or working in the immediate area.*

As discussed above, the use will be located in the Valley View subdivision, an integrated and well-established residential subdivision. However, for the reasons stated above, it cannot be found that the proposed personal care boarding home would have any impact on the persons living or working in the immediate area of the subject property, nor any impact by those individuals on the residents of the proposed use.

**Case No. 5802 – 408 Realty LLC**

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The property is accessed by a County owned and maintained road.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

No fiscal impact can be identified, nor impact on the orderly growth of the community.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such adverse impacts will be generated by the facility.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Bel Air Volunteer Fire Department will provide service to the property. The project is served by public water and private septic system. The Applicant will be required to arrange for trash collection with a private hauler.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

No evidence that the proposal would be anything but consistent with all accepted engineering and planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such facilities have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

**Case No. 5802 – 408 Realty LLC**

The proposal use will not have an adverse impact on surrounding land uses and would be in compliance with the Master Land Use Plan and all related studies.

*(9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No sensitive natural features have been identified. There should be no impact on opportunities for recreation and open space, as the residents will not be concerned with such facilities.

*(10) The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Furthermore, the use must be judged in light of the standards enunciated in Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981). Simply put, if the proposed use at the proposed location has an impact greater than such a use at another location within the zone, then the use should be denied. However, if the impact is the same or less than its impact at another location within the zone, then the use must be approved. After all, a special exception is considered by Harford County to be an allowable use, provided all specific and general standards are met.

As discussed above, the use in and of itself will have no perceptible impact of any nature. The use will continue to appear as a single-family, residentially used parcel. The argument that its impact is greater at this location because of other similar uses in the Valley View subdivision would have merit only if the proposed use had some identifiable or perceptible adverse impact which, when combined with other similar impacts in the neighborhood, would justify a denial under the standards of Schultz v. Pritts. However, for reasons stated above, it is found there is no such impact.

**CONCLUSION:**

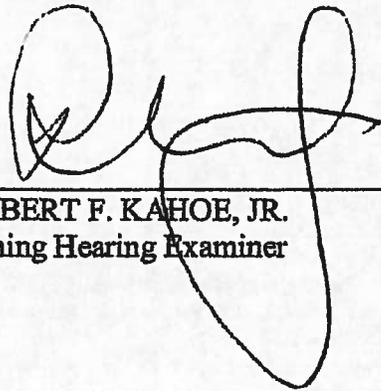
Accordingly, for the reasons stated above, the requested special exception for a personal care boarding home for three (3) residents be approved, subject to the following conditions:

1. The Applicant shall submit detailed plans for review and approval through the Department Advisory Committee (DAC).
2. The Applicant shall obtain all applicable County and State permits to operate the personal care boarding home.
3. The Applicants shall comply with the requirements of Chapter 199 of the Harford County Code.

**Case No. 5802 – 408 Realty LLC**

4. The approval of the Special Exception shall be limited to the Applicant only. The personal care boarding home shall not be transferred to another person or entity.
5. This approval is limited to 3 boarders and no permanent residents other than the boarders shall be permitted to reside in the dwelling.

Date: September 18, 2013



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ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 16, 2013.**