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

**DATE OF DECISION:** January 3, 2017  
**HEARING EXAMINER:** Robert F. Kahoe, Jr.  
**RE:** Zoning Appeal Case No. 5872  
**APPLICANTS:** Diana Harloe  
(Contract Purchasers: Joyce & David Apperson)  
**LOCATION:** 304 Vale Road, Bel Air  
**REQUEST:** Special exception to operate a personal care  
boarding home in the R2 District

Enclosed is an official copy of the Hearing Examiner's decision relative to the above referenced case.

The Hearing Examiner's decision shall become final **JANUARY 23, 2017**.

This decision shall be considered a recommended opinion to the Harford County Council, sitting as The Board of Appeals, if a written request for Final Argument before the Harford County Council is filed by the close of business on above date by the Applicant, Applicant's Attorney, Opponents, People's Counsel, or a person aggrieved who was a party to the proceedings before the Hearing Examiner. In addition, any Board Member, upon written notice to the Council Administrator, may request final argument.

COUNTY COUNCIL OF HARFORD COUNTY

**Mylia A. Dixon**  
Council Administrator

Enclosure

**cc: Applicant/Attorney; People's Counsel; Department of Planning and Zoning**



**APPLICANTS:** Diana Harloe,  
Joyce & David Apperson

**REQUEST:** Special exception to permit  
a personal care boarding home in the R2  
District

**HEARING DATE:** November 30, 2016

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**  
**Case No. 5872**

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

**APPLICANT:** Diana Harloe

**CONTRACT PURCHASERS:** Joyce & David Apperson

**LOCATION:** 304 Vale Road, Be Air  
Tax Map: 48 / Grid: 1F / Parcel: 283  
Third (3<sup>rd</sup>) Election District

**ZONING:** R2 / 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 R2 Urban Residential District.

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

The subject parcel is 3.24 acres in size, zoned R2 Urban Residential and is located on Vale Road just outside the town limits of Bel Air. The property is improved by a large, 6,799 square foot, older two-story stone and frame house, detached stone guest house, and a 5-car garage with an apartment above. The parcel is a well-known landmark in the Bel Air area.

The property has been for sale for some time. The Contract Purchasers, Joyce and David Apperson, would like to purchase the property, contingent upon receiving zoning approval to operate a personal care boarding home pursuant to Harford County Code Section 267-88F(6). Accordingly, this application has been filed.

Joyce Apperson first testified. Mrs. Apperson stated that her business, "Caring Connections, Inc." has been providing in-home patient care services for more than 10 years, and she has 20 – 30 employees. Mrs. Apperson has had experience with personal care boarding homes, although she presently is not affiliated with any such facility. Mrs. Apperson is a registered nurse.

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Mrs. Apperson sees a need for additional personal care boarding facilities in Harford County and wishes to convert the subject property to such a facility. Since she is in the business, she feels the subject property would be a good location.

She described the subject property as having seven bedrooms and a five-car garage. She understands that the garage cannot be used as part of the personal care boarding home. There are two access drives onto Vale Road, along with significant frontage on Vale Road. Mrs. Apperson has no plans to change the building or driveway or, indeed, any of the exterior features of the property. She will construct nine additional parking spaces as shown on the site plan. Six of these spaces will be in front of the existing garage, and three spaces will be located across the driveway from the home, on the east side.

Mrs. Apperson and her husband will reside on the property. During the day, there will be two employees on-site from 7:00 am to 7:00 pm. There will be no employees at night, with Mr. and Mrs. Apperson providing care. Accordingly, there will always be two caregivers on-site at any one time.

Mrs. Apperson is asking for approval for up to fourteen residents on the property. She will be applying for all other necessary permits. The Maryland State Department of Health will be inspecting the property yearly. Employees will require certification to allow them to dispense medications. A doctor will be on-call and will make periodic visits.

Alzheimer patients will not qualify for admission. Most of the residents will require some assistance with daily activities.

Mrs. Apperson does not envision a great many visitors coming to the property. The average stay of the residents will be two to three years, after which most residents will have developed the need for increasingly skilled nursing care.

Mrs. Apperson understands the recommendations of the Harford County Department of Planning and Zoning and the provisions of the Development Regulations which pertain to this request, and agrees to abide by those conditions and recommendations.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune, Chief of the Current Planning Division. Mr. McClune describes the property as being located within the Development Envelope. The parcel is 3.24 acres in size and was subject to a 1979 request to allow the five-car garage of two-stories in height. The garage cannot be used as part of the personal care boarding facility operation.

Mr. McClune stated that the use must be State licensed and will be subject to various State inspections and approvals. Neither Mr. McClune nor the Department believe the use will have an adverse impact on the neighborhood and, in fact, Mr. McClune believes there should be no impact. Vale Road is an urban collector road and, due to the limited traffic to be generated by the use, he sees no impact to Vale Road.

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Mr. McClune and the Department believe that the special exception should be granted, as a personal care boarding home at the proposed location will have no greater impact than if located somewhere else within the zone.

The Staff Report concluded:

“The Applicants are proposing to establish a personal care boarding home for fourteen (14) residents within an existing dwelling. The Appersons also plan to reside on the property. The Department of Planning and Zoning has reviewed the site plan submitted with the application. The property is extensively buffered from adjacent development by mature trees and established landscaping. No exterior changes to the existing structures are proposed with this request. The proposed use and required parking areas are located approximately 175 feet north of Vale Road and 250 feet west of the Vale Meadows subdivision. The Applicants’ proposed personal care boarding home will not adversely impact the residential character of the surrounding neighborhoods.”

Two neighboring residents testified, both expressing their hope that the use does well, although somewhat skeptical of the ability of the Applicants with only two employees to care for fourteen residents.

There was no other testimony or evidence given in opposition to the request.

### **APPLICABLE LAW:**

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

- “(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:*
- (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) *All applicable State and County laws and regulations are satisfied.”*

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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:**

This 3.24 acre parcel has extensive frontage along Vale Road, which is classified by Harford County as an urban collector road and adjoins the Bel Air Bypass on its westerly side, and the Vale Meadows subdivision on its easterly side. The large stone and frame home is set back a significant distance from its nearest residential neighbors in Vale Meadows. Adequate paved parking exists on-site with two clear and well defined access points onto Vale Road. Parking will be supplemented by the addition of nine parking spaces to be developed off the existing driveways.

The parcel is more than sufficient in size for the fourteen residents proposed by the Applicants as, in fact, the Harford County Code would allow considerably more residents given the parcel size. The Applicants promise to maintain the existing exterior in its present condition, and this will be made a condition of approval. While neighbors expressed some concern about the ability of the Applicant to care for the 14 residents, this is not a consideration in this review, as the State Health Department would have jurisdiction over such matters. No evidence supports any sort of finding of adverse impact.

There is, in short, no reason to deny the application as it meets all specific and general Code 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 R2 Urban Residential District.

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

The proposed use is to 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.*

This requirement is met. The parcel is in excess of 3 acres.

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

This 3+ acre parcel allows for considerably in excess of the fourteen residents proposed.

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- (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.*

This provision is not applicable.

- (e) *All applicable State and County laws and regulations are satisfied.*

This provision will be made a condition of approval.

Clearly, the Applicants can easily meet all specific requirements of the special exception for a personal care boarding home under the Harford County Development Regulations. However, and furthermore, the Applicants must satisfactorily meet the more generalized standards of Harford County Code Section 267-9I, Limitations, Guides and Standards, addressed 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.*

The immediately surrounding properties to the East are residential in use, with some commercial uses located on Rock Spring Road (MD Route 24). The property will retain its present exterior appearance. There should be little traffic either to or from the personal care boarding home itself, and the use will generally not have any impact on the neighborhood.

An occasional emergency vehicle will enter or leave the property, but this should not be to such an extent to cause any impact in the neighborhood. Accordingly, there is sufficient evidence to support a finding that the proposed use will have no impact on the number of persons living and working in the area.

- (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.*

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Vale Road is an urban collector road and supports heavy traffic, especially during traditional commuter times. However, the proposed facility, having only two employees and with fourteen full-time residents, should generate very little traffic and will have no perceptible impact on traffic flow on Vale Road. Access points are well situated and designed and should, similarly, have no impact on motorists utilizing Vale Road. Pedestrian accommodation will not be an issue.

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

There should be minimal, if any, impact on the orderly growth of the neighborhood or on the fiscal impact on the County.

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

None of these characteristics should be generated by the proposed personal car boarding home.

- (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 fire protection and emergency services to the property. The existing dwelling is currently serviced by a well and private septic system. If permitted, the proposed use shall continue to utilize the existing well for water service and private septic system. The Applicants will be responsible for choosing a solid waste disposal service.

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

The proposed use is consistent with general accepted engineering and planning principles. No changes to the exterior appearance or the residential character of the dwelling are proposed and, in fact, a condition will be appended to this decision requiring the current exterior appearance of the property be maintained, and not altered in any way. Likewise, the grounds, drives and parking areas of the parcel shall be properly maintained.

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

No institutional structures have been identified.

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- (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.*

There is no evidence to support a finding that the proposed use would be anything but a benign influence on the community and surrounding land uses.

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

No sensitive natural features on the property have been identified.

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

No such landmarks have been identified.

Lastly, the proposal must be found to comply with the standards contained in Schultz v Pritts, 291 Md. 1, 432 A.2d 1319 (1981) which declared that a special exception should not be allowed if it would have a greater impact at the location proposed than it would at some other location in the zone.

There is, however, simply no attribute of the subject property or of the use which would cause it to have a particularly adverse impact, certainly no greater impact at the Vale Road location than it would if located somewhere else. Indeed, it is hard to envision any adverse impact of any nature provided the Applicants adhere to all County and State regulations, as they must, and comply with the provisions of this recommended decision.

Accordingly, it is found that the proposed use would have no greater impact at the proposed Vale Road location than it would if located somewhere else within the R2 Urban Residential District.

**CONCLUSION:**

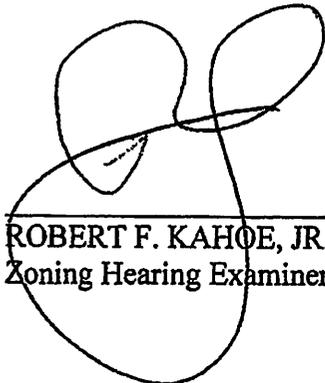
Accordingly, it is recommended that the requested special exception for a personal care boarding home be granted, subject to the following conditions:

1. The Applicant shall submit a site plan for review and approval through the Development Advisory Committee (DAC).
2. The Applicant shall obtain and comply with all applicable County and State permits and approvals to operate the personal care boarding home.
3. The approval of the Special Exception shall be limited to the Applicants only. The personal care boarding home shall not be transferred to another person or entity.
4. The Applicant shall obtain all applicable permits and approvals for the accessory structures, additions and existing pool located on the proposed site.

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5. The detached garage may only be used for the Apperson's personal storage and vehicle parking.
6. This approval is limited to fourteen (14) residents.
7. No changes to the exterior appearance and residential character of the dwelling and grounds shall be made. The buildings, grounds, drives and parking areas of the property shall be properly maintained at all times.

Date: JANUARY 3, 2017



ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on JANUARY 23, 2017.**