

**BROOKE GROVE FOUNDATION**  
**154 N. Artizan Street**  
**Williamsport, MD 21795**

**APPEAL NO. AP2006-080**

**Appellant**

**OPINION**

This action is a request for a special exception to establish a nursing home and assisted living facility. The subject property is a lot of record on the west side of Route 63 and the east side of Honeyfield Road, is owned by William W. Taylor, Jr., Trustee, and is zoned Residential, Rural.

A public hearing was held before a full Board on July 19, 2006. Appellant offered evidence and testimony in support of the appeal. Opponents offered evidence and testimony in opposition to the appeal.

**FINDINGS OF FACT**

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellant plans to operate a nursing home and assisted living facility on the subject property.
2. The proposed site consists of 16.95 acres in 3 parcels.
3. 15% of the site will be reserved for roads and stormwater management structures.
4. Eighty-four duplexes are planned for the assisted living facility, in accordance with existing zoning density allowances.
5. Craig Walton, the project architect who specializes in senior housing, testified that the buildings are sited to comply with existing ordinances, and no variances are needed.
6. This project will be a phased construction, to be completed over a number of years.

7. Received and filed with the Board was a memorandum from Kathy A. Kroboth, Washington County Zoning Coordinator, advising that the appeal is consistent with the Comprehensive Plan.

8. Testifying in opposition to the appeal, Received and filed with the Board was a memorandum from Terrence P. McGee, Chief Engineer, Washington County Engineering Department, advising that the Department took no exceptions to the subject request.

9. The proposed use is compatible with the existing neighborhood.

#### RATIONALE

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Section 28.62. Section 25.6 of the Ordinance directs the Board to consider the following factors, as applicable, in rendering its decision: (a) The number of people residing or working in the immediate area concerned; (b) the orderly growth of a community; (c) traffic conditions and facilities; (d) the effect of such use upon the peaceful enjoyment of people in their homes; (e) the conservation of property values; (f) the effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values; (g) the most appropriate use of land and structure; (h) the decision of the courts; (I) the purpose of these regulations as set forth herein; (j) the type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

In the instant appeal, the Appellant proposes construction, in phases, of a nursing home and assisted living facility. The proposed property is of ample size for such a use, and no variances will be required by the proposal, either for setbacks or for density. The proposed intensity of the use, that is to say, could be similarly achieved with common residential development without the need for a special exception. Use of the property as an assisted living campus (which includes a nursing home) is appropriate as there was evidence presented that the property is served by adequate roads and will not create offensive odors, dust, gas, smoke, fumes, vibrations, or noise. In short, the proposal is compatible with both the Comprehensive Plan and the existing neighborhood, and will result in orderly growth of the community.

Opposition to this appeal can be fairly summarized as objections to the “intensity” or scale of the proposed use and a desire for the property to remain undeveloped. A property owner has, in this country, the right to use private property for permissible purposes,

including development. As previously mentioned, a residential community having the same density of 84 duplexes is permitted as a matter of right in this zoning district, without any need for approval by this Board. Thus, the real question is whether this proposed use “. . . would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 15 (1981). No particularized evidence was presented that would allow us to conclude that an assisted living campus at this location would have more deleterious effects than would an assisted living campus at any other location in a Residential Rural zone.

Based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 18<sup>th</sup> day of August, 2006.

By: Spence Perry, Chair