

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBERS 2009-0122-S AND 2009-0123-V**

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**SNYDER/ELVATON, LLC**

THIRD ASSESSMENT DISTRICT

DATE HEARD: JULY 16, 2009

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ORDERED BY:

**DOUGLAS CLARK HOLLMANN**  
ADMINISTRATIVE HEARING OFFICER

**PLANNER: LORI RHODES**

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DATE FILED: **JULY 31, 2009**

## **PLEADINGS**

Snyder/Elvaton, LLC, (hereinafter the applicant), seeks a special exception (2009-0122-S) to allow an assisted living facility in a residential district, and a variance (2009-0123-V) to allow an extension in time required for the implementation of a special exception for an assisted living facility on property located along the east side of Old Mill Road, east of Oakwood Road, Millersville.

## **PUBLIC NOTIFICATION**

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Danny G. Boyd, the applicant's engineer, submitted an affidavit indicating that the property was posted on June 29, 2009 (Applicant's Exhibit 1). I find and conclude that the requirements of public notice have been satisfied.

## **FINDINGS**

A hearing was held on July 16, 2009, in which the witnesses were sworn and the following was presented with regard to the proposed relief requested by the applicant.

## The Property

The subject property is composed of a number of parcels that have been assembled to create an area totaling 86.78 acres, excluding 11.66 acres of wetlands and floodplain and lands occupied by existing dwellings. *See*, County Exhibit 7, *Concept Master Plan*, admitted into evidence at the hearing on this application.<sup>1</sup> The total net area is 73.8 acres. A portion of the lands is described as Bulk Parcel “A”, and consists of 35.27 acres. The overall site has approximately 350 feet of frontage along the east side of Old Mill Road, 0 feet east of Oakwood Road. The subject property is zoned residential (R1 Residential District, R2 Residential District and R5-Residential District).

## The Proposed Work

The applicant is seeking the necessary approvals to construct an assisted living facility in a residential district. The applicant is also seeking a variance to allow an extension in time for the implementation of the special exception, if it is granted.

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<sup>1</sup> The southern portion of the property owned by the applicant lies across Obrecht Road, which is at the southern end of the overall property. The Concept Master Plan, admitted into evidence as County Exhibit 7, appears to treat the southern portion as part of the Master Plan, yet nothing is depicted on this portion of the subject property that indicates any intention to construct improvements there. County Exhibit 5, a letter dated July 8, 2009 from Boyd & Dowgiallo to the Office of Planning and Zoning, accompanied a modified site plan to establish greenways across the subject property. In that letter, the applicant, through its agent, Boyd & Dowgiallo, stated that “[t]he development area will be restricted to the portion of the property between Elvaton and Obrecht Road, . . .” There was no testimony at the hearing about developing the southern portion of the subject property. Therefore, this decision will affect that land that lies north of Obrecht Road, as shown on County Exhibit 7, and not the parcel shown to the south on the other side of Obrecht Road.

## **The Anne Arundel County Code**

Article 18, § 18-11-104, sets forth the requirements that must be met to grant a special exception for an assisted living facility in a residential district. Further, all special exceptions are subject to the general standards contained in § 18-16-304.

Variances to the time requirements of the Code are governed by § 18-16-405 (a), which provides that a variance or special exception expires by operation of law unless the applicant obtains a building permit within 18 months of the granting of the variance or special exception. Thereafter, the variance or special exception shall not expire so long as construction proceeds in accordance with the permit.

### **The Evidence Submitted At The Hearing**

Ms. Lori Rhodes, a planner with the Office of Planning and Zoning (OPZ), testified that the subject parcel is irregularly shaped and exceeds the minimum lot width and area requirements for the R2 and R5 districts. Large portions of these lands are fallow or undeveloped, and contain woods and nontidal wetlands and floodplain. The majority of the wetlands are located on the east side of the subject property and are centered on Parcel 141.

Three of four parcels are improved with single-family dwellings together with outbuildings, gravel driveways, and lands used agriculturally to include two ponds. According to State tax records, Parcel 141 is currently assessed for agricultural use without buildings. Parcel 274, Lots 1 and 2 are improved with

single-family dwellings and both Parcels 279 and 615 are improved with a dwelling and an agricultural use.<sup>2</sup> The existing dwellings on these properties will remain.

The applicant proposes to develop Parcels 141, 274, 279 and 615 for an active adult community with independent dwellings units, assisted-living beds, and associated light commercial uses.<sup>3</sup> These parcels have a total gross land area of 86.78 acres, excluding 11.66 acres of wetlands and floodplain and lands occupied by existing dwellings. The total net area is 73.8 acres.

The concept plan delineates the density tabulation, which shows the acreage breakdown and the number of dwelling units allowed. The R1 zoned lands contain 7.42 acres; R2 contains 68.91 acres and R5 with 5.95 acres.<sup>4</sup> A major subdivision known as “The Russell C. Wade, Jr. Property” tracked in Planning and Zoning as Subdivision #01-072, Project #08-0032 was approved by the Planning and Zoning Officer on June 3, 2009. The purpose of this subdivision application was to amend the record plat to reduce the size of Lots 1 and 2 and to create a bulk parcel for Parcel 274.<sup>5</sup>

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<sup>2</sup> Parcel 274 has two dwelling addressed as 8324 Elvaton Road and 8326 Elvaton Road located on Lots 1 and 2. Parcel 279 has one dwelling addressed as 8318 Elvaton Road. Parcel 615 has one dwelling addressed as 402 Obrecht Road.

<sup>3</sup> The revised plan was submitted to OPZ on July 7, 2009 showing an increase in acreage based on an updated survey.

<sup>4</sup> Section 18-11-105 of the Zoning Code provides for maximum density for independent dwelling units as 3 units per net acre in an R1 district, 6 units per acre in an R2 district and 8 units per net acre in an R5 district. The subject property is within the allowed maximum density for independent dwelling units.

<sup>5</sup> A bulk parcel is not tested for Adequacy of Public Facilities; therefore, requires subdivision approval prior to site development.

The development area within the proposed community will contain a total of 407 dwelling units, of which 95 are townhouse units and 312 are multifamily units.<sup>6</sup> The development area will be restricted to the portion of the property between Elvaton and Obrecht Road. Access will be provided at the intersection of Oakwood Road and Old Mill Boulevard. As part of the proposed development, the unimproved right-of-way east of Old Mill Boulevard previously obtained by the County for Oakwood Road has been petitioned by the applicant for abandonment and proposed for realignment to the north of its current location. The applicant proposes a greenway with a minimum width of 200 feet be retained through the development and located primarily along the existing wetland.<sup>7</sup>

The proposed development is bound by residential communities known as Elvaton Heights and Fox Chase to the north, Elvaton Acres to the east and south and Old Mill to the west. The proposed assisted living facility will abut the communities of Elvaton Heights to the north and Old Mill to the west. Old Mill Condominium III development located to the west of Old Mill Boulevard is developed with townhouses. The Village of Old Mill, which consists of a mix of single-family dwelling types, is to the west of the subject property.

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<sup>6</sup> Concept Plan shows 5 three-story condominium buildings and 6 four-story buildings.

<sup>7</sup> Section 17-5-401 (a) (1) of the Subdivision and Development Code requires that a development passes the test for adequate road facilities if, in the scheduled completion year of the development, it creates 50 or fewer daily trips or if (1) the road facilities in the impact area of the proposed development will operate at or above the minimum of “D” level of service after including the traffic generated by the development. Adequacy of Public Facilities is addressed at time of permit and is not a requirement of the special exception application.

With respect to the specific criteria for a special exception, Ms. Rhodes testified that:

1. The subject Bulk Parcel A (part of Parcel 274) meets the five-acre lot requirement.
2. Independent dwelling units consist of a combination of dwelling types that would be occupied by individuals who are 55 years of age or older.
3. 80 Assisted care units will be provided in Building “A” in the northwestern corner of the site.
4. Comprehensive care units may be provided in Building “A”.
5. No more than two dwelling units for every 100 dwelling units would be devoted to temporary use for guests or family members of residents.
6. The commercial uses allowed in a C1 district are allowed in the facility and the uses will be centrally located for the use and benefit of the residents and their guests in structures that are architecturally compatible with the residential portion of the development. Six one-story buildings are proposed with a total of 33,595 square feet that is within the allowed 10% of the total floor area of the dwelling units. (The total floor area proposed for the development is 619,800 square feet, which allows a maximum floor area of 61,980 square feet for commercial uses as part of the development.)
7. The applicant would provide shuttle bus service for residents to recreational, shopping and medical facilities.

8. The applicant would provide a pedestrian circulation system interconnecting all parts of the facility with sidewalks and walkways.
9. The facility would be setback from all lot lines by at least 50 feet. The height of the principal structure would be the height allowed in the R2 and R5 zoning districts. The applicant has the option to an excess of 10 additional feet in height with all setbacks increased by two feet for each foot of excess height. 60% percent of the lot is devoted to open area with at least 10% percent of the open area devoted to recreational area.
10. The subject property will be served by public water and sewer facilities.

As to the general special exception standards, Ms. Rhodes testified that OPZ finds that the proposed assisted living facility would not be detrimental to the public health, safety, or welfare; the proposed use would be compatible with the R2 and R5 district; the proposed facility would be no more objectionable with regard to noise, fumes, vibration, or light than other permitted uses; and the proposed use would not conflict with the existing programmed public uses. The applicant has indicated that all requirements of the Landscape Manual will be satisfied, and evidence of public need will be provided by evidence at the hearing.

Regarding the request for a variance to allow for an extension of time in which to complete the work, if the special exception is granted, Ms. Rhodes testified that OPZ finds there are exceptional circumstances in this case given the size and scope of the project and the extensive engineering required to design and gain approval of grading and building permits. In addition, the process of

obtaining wetlands permit process, modifications to the plan, and designing the project to meet environmental requirements, will take up more time than the normal period given to obtain building permits. As a result, OPZ has concluded that the grant of a variance to extend the time to implement the special exception is necessary to avoid practical difficulties or unnecessary hardship so that the applicant will be able to develop the subject property. Ms. Rhodes testified that the grant of the variance requested will not alter the essential character of the neighborhood or substantially impair the appropriate use or development of adjacent property. It appears that a 3-year time extension is the minimum necessary to afford relief.

The Health Department had no objection to the requested relief because the proposed project will be served by public water and sewer facilities.

The Development Division offered comments that a grading permit must be issued before May 4, 2010; otherwise, the applicant will be required to design the project to meet the State's new stormwater management criteria. The new criteria requires that non-structural stormwater management measures be provided as outlined in the Design Criteria of the Stormwater Management Practices and Procedures Manual. Adequacy of Public Facilities for water and sewage, roads, fire suppression, schools (if applicable) and storm drainage must be tested and approved. Should the future Hospital Drive right-of-way be abandoned, the proposed roads to serve multifamily buildings #4, #5 and #6 could be redesigned to provide better vehicular access to these buildings. Floodplain studies must be

prepared as well as acquiring the required Maryland Department of the Environment permits for wetlands and their associated buffer disturbance along with the County's formal modifications, if applicable.

The Department of Recreation and Parks offered comments that the property encompasses a segment of the Marley Creek Greenway, designated as preservation area on the Anne Arundel County Greenways Master Plan. The applicant must examine opportunities to provide for our community by protecting the wildlife and fauna that enriches it. The applicant's letter of explanation acknowledges the greenway; however, it is recommended that a connected greenway be provided through the property. Pockets of wetland will not function in the manner that a greenway corridor would. The special exception plan indicates that development would sever the greenway leaving dead ends. Dead ends are not supported unless they are large enough to act as hubs themselves. Greenway corridors should be continuous with a minimum width of 200 feet. Please provide a corridor through the development to provide for the continued passage of wildlife through this corridor area. There are no parks or trails contiguous to these parcels. This agency withholds recommending approval of the special exception application until such time as the greenway is accommodated in the design.<sup>8</sup>

Based upon the standards set forth in § 18-16-304 and § 18-16-305 under which a special exception and variance may be granted, Ms. Rhodes testified that

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<sup>8</sup> The applicant revised their site plan based on the comments from Recreation and Parks, and submitted evidence at the hearing of the changes made to meet the concerns about the greenway requirements.

OPZ recommended approval of the variance request and conditional approval of the special exception request as follows:

1. The applicant shall comply with the comments of the Development Division.
2. Comply with the requirements of the Landscape Manual, and any instructions and necessary approvals from the Permit Application Center.
3. Provide a 200-foot wide continuous greenway corridor through the proposed development to the satisfaction of the Department of Recreation and Parks.

Ms. Rhodes testified that OPZ would not object to minor changes to the facilities as determined by the Office of Planning and Zoning to adjust for unforeseen events, or information that may arise during the site plan review and subdivision process, or during construction. Finally, the applicant must demonstrate need for the project.

Mr. Danny G. Boyd, President of Boyd & Dowgiallo, P.A., was accepted as an expert witness in the field of engineering and land planning. Mr. Boyd testified that the subject property had been cobbled together from a number of parcels to make up the area needed to build the development proposed by the applicant. The subject property is zoned predominantly R2 residential, with a slice of property in the northwest corner that is zoned R5, and a parcel to the south across Obrecht Road that is zoned R1. The development will be composed of an age-restricted

active adult community with independent dwelling units, assisted-living beds, and associated light commercial uses.

Mr. Boyd testified to the applicant's efforts to meet concerns of the neighboring communities and the various County offices. He testified that the modified site plan provides for greenways across the property that he believes satisfies the concerns of the Department of Recreation and Parks. See, County Exhibit 4, which graphically represents the greenways that are now planned for the community. Also, the assisted living center in the northwest corner of the property has been reduced from 3 stories and 120 beds to 2 stories and 80 beds. Finally, the community is designed to provide, among other things, access inside the community to commercial facilities. The Code would permit commercial uses up to 61,980 square feet; the applicant proposed approximately 33,595 square feet of structures that will provide, in one-story buildings designed to blend in with the community, services such as a bank, a pharmacy, and a grocery store. The proposal, as now designed, meets the Code's density and setback requirements for a project of this nature.

Mr. Boyd also testified that the development will meet the needs of the County. This testimony was supported by the testimony and report of Mr. Kyle Talente of RKG Associates, Inc. (admitted as County Exhibit 6), who was accepted as an expert witness in the field of economic planning and real estate. Mr. Talente testified that the region is "underserved in age retirement housing facilities," and that the proposed development will meet the public need criteria.

In addition, he testified that the proposed commercial development reflects the expected commercial needs of the community. In fact, Mr. Talente's research resulted in the planned commercial facilities being reduced to meet the numbers generated by Mr. Talente.

Mr. Zachary Lette was accepted as an expert in landscape architecture and testified that the proposed development will meet the landscape and pedestrian requirements of the Code.

Ms. Florence Beck Kurdle was accepted as an expert in the field of land use. Ms. Kurdle testified as to the history of the subject property, the attention paid to it by the County Council in the most recent comprehensive rezoning, the capital budget relating to the Hospital Drive realignment and future plans for this proposed road, and how the proposed development complies with the Glen Burnie Small Area Plan (SAP) (admitted as Applicant's Exhibit 8a). She testified that it was significant that the proposed zoning for this area was modified in the SAP to increase the density of housing in this area. Ms. Kurdle presented selected sections from the SAP to show that the proposed development dovetailed with the need for senior housing expressed in the plan. See, Appellant's Exhibit 8-b. These excerpts show that the Plan intends that development provide a "wealth of housing choices" (page 19), plan for "walkable communities" (page 40), and preserve and maintain open areas and greenways (page 60). Ms. Kurdle testified that the proposed development meets all these goals.

Ms. Kurdle presented photographic evidence of development in the surrounding area, both residential (Applicant's Exhibit 10a, 10b, 10d, 10e, 10f, and 12) and commercial (Applicant's Exhibit 10c), to show that the proposed development would be compatible with surrounding areas. Applicant's Exhibit 11 graphically showed the distance and screening that would separate three portions of the development from neighboring properties. Ms. Kurdle testified that the setbacks would be more than required, and there would be heavy vegetative screening.

Ms. Kurdle concluded that, in her opinion, the development meets the criteria of § 18-11-104 for an assisted living facility, as well the general criteria found in § 18-16-304.<sup>9</sup>

Ms. Sarah Hakulin testified that she lives nearby and is the current treasurer and past president of the Village of Olde Mill Community Association, Inc. She presented a letter from Tom Stag, the current president, which authorized Ms. Hakulin to speak for the Association (Protestant's Exhibit 1). Ms. Hakulin expressed concern about the changes that the proposed development would bring to the neighborhood, but recognized that the subject property could be developed as residential if the proposed age-restricted community is not built. She presented no scientific or expert evidence that the proposed development did not meet the standards in the Code for a development of this type. Her worries were more

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<sup>9</sup> Ms. Kurdle testified at length as to each of the nine separate findings required by § 18-16-304, and showed that there was evidence to support a decision allowing the special exception requested. These factors are discussed below.

about the impacts to wetlands and greenways, as well as traffic problems, which are dealt with during the permitting and construction process. She was advised to remain involved in that process since many decisions will be made as the project goes forward.

Ms. Marie Fries testified that she lives adjacent to the planned assisted living facility. She was concerned about setbacks and the impact the proposed development would have on her use of her property, and on her children who play in the area and go to school nearby. She testified that there were wetlands where the assisted living facility will be sited. However, she presented no scientific or expert evidence to identify those wetlands, or how the proposed development would not take existing wetlands into account as the site preparation process went forward. Colloquy between counsel for the applicant, Mr. Harry C. Blumenthal, as well as other witnesses at the hearing, and Ms. Fries and other residents, who came to the hearing, may have provided information to them that answered their questions about the need for the development to be self-contained and to provide some commercial services for the residents. Ms. Fries was also advised to continue to participate in the permitting process as the project went forward.

Mr. Michael Hakulin also expressed concern about the project and the impact of the development on the neighborhood where he and his wife, Sarah Hakulin, have lived for many years. No evidence was presented, however, that would show that the specific criteria enunciated in the Code for this type of special exception have not been met by the applicant.

There was no other testimony given. The Hearing Officer visited the site but not speak with anyone.

### **DECISION**

The law is settled that a special exception use is a use that the legislative body recognizes as compatible with permitted uses, subject to a public hearing to show compliance with the underlying standards. Schultz v. Pritts, 291 Md. 1 (1981); Peoples Council for Baltimore County, et al v. Loyola College in Maryland, in the Court of Appeals of Maryland 137, September Term 2007, (September 9, 2008).

The County Code defines “Assisted living facility” in § 18-1-101 as meaning “a facility with an assisted living program as defined in Health-General Article, § 19-1801, of the State Code.” § 19-1801 of the Health-General Article reads as follows:

§ 19-1801. "Assisted living program" defined.

In this subtitle:

(1) "Assisted living program" means a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination thereof that meets the needs of individuals who are unable to perform or who need assistance in performing the activities of daily living or instrumental activities of daily living in a way that promotes optimum dignity and independence for the individuals.

(2) "Assisted living program" does not include:

- (i) A nursing home, as defined under § 19-301 of this title;
- (ii) A State facility, as defined under § 10-101 of this article;

- (iii) A program licensed by the Department under Title 7 or Title 10 of this article;
- (iv) A hospice care program regulated by the Department under Subtitle 9 of this title;
- (v) Services provided by family members;
- (vi) Services provided in an individual's own home; or
- (vii) A program certified by the Department of Human Resources under Title 6, Subtitle 5, Part II of the Human Services Article as a certified Adult Residential Environment Program.

The evidence shows that the proposed facility does not come under any of the prohibited categories contained in subsection (2) above. The evidence shows that the proposed facility will be an assisted living facility as defined in Anne Arundel County Code § 18-1-101 and § 19-1801 of the State Code.

The standards governing the grant of a special exception for an assisted living facility is found in § 18-11-104, which reads as follows:

§ 18-11-104. Assisted living facilities.

An assisted living facility shall comply with all of the following requirements.

(1) In R1 and R2 Districts, the facility shall be located on a lot of at least 10 acres, except that a facility that abuts a collector or higher classification road may be located on a lot of at least five acres. In other districts, the facility shall be located on a lot of at least five acres.

(2) Independent dwelling units may be a combination of various dwelling types. The units shall be occupied exclusively by individuals who are 55 years of age or older.

(3) Assisted care units shall be provided and shall be in a multifamily structure. The structure shall contain a centrally located group dining facility. An “assisted care unit” is defined as a dwelling unit for individuals who require assistance, monitoring, or supervision in daily living activities.

(4) Comprehensive care units may be provided. A “comprehensive care unit” is defined as a room for individuals requiring continuous health care services.

(5) No more than two dwelling units for every 100 dwelling units may be devoted to temporary use for guests or family members of residents.

(6) The permitted uses in a C1 District are allowed in the facility if:

(i) the uses are centrally located for the use and benefit of the residents and their guests in structures that are architecturally compatible with the residential portion of the development; and

(ii) the floor area of the uses does not exceed 10% of the floor area of the dwelling units.

(7) Shuttle bus service for residents to recreational, shopping, and medical facilities shall be provided.

(8) A pedestrian circulation system interconnecting all parts of the facility with sidewalks and walkways shall be provided.

(9) The bulk regulations contained in the following chart shall be met:

Minimum setbacks from all lot lines	50 feet
Maximum height limitations for principal structures	The height allowed in the zoning district in which the facility is located, except that the facility

	may exceed that height by 10 feet if all setbacks are increased by two feet for each foot of excess height
Open area	60% in R1, R2, and R5 Districts and 50% in R10, R15, and R22 Districts, with all front yards being open area and with at least 10% of the open area devoted to recreational area
Maximum net density for independent dwelling units	3 units per net acre in an R1 District; 6 units per net acre in an R2 District; 8 units per net acre in an R5 District; and in all other districts in accordance with the requirements of the district in which the facility is located
Public sewer	Required

The evidence shows that the applicant has complied with each of the specific criteria set forth above.

**Requirements for Special Exceptions**

In addition to meeting the requirements of §18-11-104, § 18-16-304 of the Code requires that the Hearing Officer make affirmative findings that:

- (1) The use will not be detrimental to the public health, safety, and welfare;
- (2) The location, nature, and height of each building, wall, and fence, the nature and extent of landscaping on the site, and the location, size, nature, and intensity of each phase of the use and its access roads will be compatible with the appropriate and orderly development of the district in which it is located;

(3) Operations related to the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in other uses allowed under this article;

(4) The proposed use will not conflict with an existing or programmed public facility, public service, school, or road;

(5) The proposed use has the written recommendations and comments of the Health Department and the Office of Planning and Zoning;

(6) The applicant has presented sufficient evidence of public need for the use;

(7) The applicant has presented sufficient evidence that the use will meet and be able to maintain adherence to the criteria for the specific use;

(8) The application will conform to the critical area criteria for sites located in the critical area; and

(9) The administrative site plan demonstrates the applicant's ability to comply with the requirements of the Landscape Manual.

I find that the applicant has also met the requirements of § 18-11-104. Specifically, the applicant has shown public need for this project, and that the proposed use will not be detrimental to the public health, safety, and welfare. Furthermore, the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in other uses allowed under this article, and will not conflict with an existing or programmed public facility, public service, school, or road. The Department of Health and the Office of Planning and Zoning have recommend approval. The applicant has presented sufficient evidence that the use will meet and be able to maintain adherence to the criteria for the specific use. Finally, the administrative site plan and testimony by

Mr. Lette demonstrate the ability of the applicant to comply with the requirements of the Landscape Manual.

I conclude that the applicant has complied with the requirements of § 18-16-304 and is entitled to the special exception requested.

### **The Variance**

The applicant is also seeking a variance to allow an extension in time for the implementation of the special exception. § 18-16-405(a) provides that a special exception expires by operation of law unless a building permit is obtained within 18 months and construction proceeds in accordance with the permit. The applicant believes that an extension is necessary because the site development process will, in all likelihood, take more time than the year and a half allowed by the Code. OPZ agrees.

Ordinarily, the time to ask for an extension would be when the window opened by the granting of the special exception begins to close. However, everyone who testified at the hearing agreed that an extension will be required in this case. Since this Office has in the past granted such extensions at the same time a decision was issued granting a special exception, I will grant the requested variance.

The applicant seeks three years from the expiration date that will apply if this variance request is not granted. In other words, the applicant seeks a window of a total of four and one-half years to obtain the necessary permits and complete the construction authorized in accordance with the permits obtained.

## Requirements for Zoning Variances

§ 18-16-305 sets forth the requirements for granting a zoning variance.

Subsection (a) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that practical difficulties or unnecessary hardships prevent conformance with the strict letter of this article, provided the spirit of law is observed, public safety secured, and substantial justice done. A variance may be granted only if the Administrative Hearing Officer makes the following affirmative findings:

- (1) Because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or
- (2) Because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot.

The variance process is a two-step process. The first step requires a finding that special conditions or circumstances exist that are peculiar to the land or structure at issue which requires a finding that the property whereupon the structures are to be placed or use conducted is unique and unusual in a manner different from the nature of the surrounding properties. The second part of the test is whether the uniqueness and peculiarity of the property causes the zoning

provisions to have a disproportionate impact upon the subject property causing the owner a practical difficulty or unnecessary hardship. “Uniqueness” requires that the subject property have an inherent characteristic not shared by other properties in the area. *Trinity Assembly of God of Baltimore City, Inc. v. People’s Counsel for Baltimore County*, 178 Md. App. 232, 941 A.2d 560 (2008); *Umerley v. People’s Counsel for Baltimore County*, 108 Md. App. 497, 672 A.2d 173 (1996); *North v. St. Mary’s County*, 99 Md.App. 502, 638 A.2d 1175 (1994), cert. denied, 336 Md. 224, 647 A.2d 444 (1994).

### **Findings - Zoning Variance**

Upon review of facts and circumstances, I find and conclude that the applicant is entitled to relief from the Code. The witnesses agree that an extension is necessary. Although a period of four and one-half years is considerable, the approval process may take that long. In any event, I recognize that the applicant will, for financial reasons, move forward diligently with its applications for permits and approvals. Consequently, the granting of the variance requested will not result in any detriment to any other party, or not be in accordance with the Code because the applicant will build this project, if it obtains approvals, as quickly as possible. I also find that this is the minimum necessary to afford relief. To deny the requested variance would work an unnecessary hardship on the applicant, and require that all parties return before this Office to participate in hearings for an extension. Such a procedure would be costly in time and money to everyone, including this Office. Therefore, I will grant the application.

**ORDER**

PURSUANT to the application of Snyder/Elvaton, LLC, petitioning for a special exception to allow an assisted living facility in a residential district, and a variance to allow an extension in time required for the implementation of a special exception for an assisted living facility; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **31<sup>st</sup> day of July, 2009**

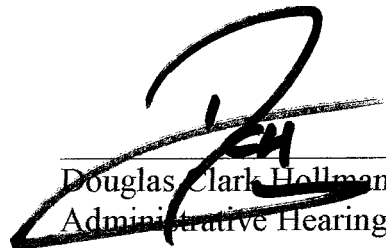
ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted** a special exception to allow an assisted living facility in a residential district pursuant to § 18-11-104, as shown on County Exhibit 7.

The foregoing special exception is subject to the following conditions:

1. The applicant shall comply with the requirements of the Landscape Manual, as required by § 18-16-304(9).
2. The applicant shall comply with any instructions and necessary approvals from the Permit Application Center.
3. The applicant shall comply with any instructions and necessary approvals from the Development Division.
4. The applicant shall comply with any instructions and necessary approvals from Department of Recreation and Parks, including providing a 200-foot wide continuous greenway corridor through the proposed development to the satisfaction of the Department of Recreation and Parks.

5. Furthermore, this Order grants the applicant the right to make minor changes to the facilities as presently shown on the site plan admitted into evidence at the hearing on this application as County Exhibit 7 to adjust for unforeseen events or information that arise during plan review, the subdivision process, or during construction. The scope and reasonableness of any such change shall be determined by the Office of Planning and Zoning.

And it is FURTHER ORDERED that the applicant is hereby **granted** a variance to extend the time to obtain a building permit until January 30, 2014, with completion in accordance with the permit.



Douglas Clark Hollmann  
Administrative Hearing Officer

**NOTICE TO APPLICANT**

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.