STANDARD APPLICATION
Harford County
Board of Appeals
Bel Air, Maryland 21014

RECEIVED
MAR 3 2006
HARFORD COUNTY COU

Case No. 5529
Date Filed 3/8/06
Hearing Date
Receipt
Fee $600.00

Shaded Areas for Office Use Only

Type of Application

____	Administrative Decision/Interpretation
X	Special Exception Modification
____	Use Variance
____	Change/Extension of Non-Conforming Use
____	Minor Area Variance
____	Area Variance
X	Variance from Requirements of the Code
____	Zoning Map/Drafting Correction
____	

Nature of Request and Section(s) of Code

CASE 5529 **MAP** 40 **TYPE** Special Exception, Variance

ELECTION DISTRICT 03 **LOCATION** 1913 Rock Spring Road, Forest Hill 21050

BY Hart Heritage Properties, LLP, 3708 Grier Nursery Road, Street 21154-1331

Appealed because a modification of conditions of approval in case 5311 to allow up to 55 residents in an Adult Day Care and up to 55 residents in an Assisted Living Facility and a variance pursuant to Section 267-36B, Table V of the Harford County Code to allow a driveway/turnaround to be located within the 50 foot use setback in a R2 District requires approval by the Board.

***NOTE:** A pre-conference is required for property within the NRD/Critical Area or requests for an Integrated Community Shopping Center, a Planned Residential Development, mobile home park and Special Exceptions.*

Applicant/Owner (please print or type)

Name Hart Heritage Properties, LLP Phone Number Call Attorney

Address 3708 Grier Nursery Road, Street, MD 21154-1331
Street Number Street City State Zip Code

Co-Applicant ____ Phone Number ____

Address ____
Street Number Street City State Zip Code

Contract Purchaser None Phone Number ____

Address ____
Street Number Street City State Zip Code

Attorney/Representative Michael E. Leaf, Esquire Phone Number 410 893-2333

Address 112 South Main Street, Suite 102, Bel Air, MD 21014
Street Number Street City State Zip Code

Land Description

Address and Location of Property 1913 Rock Spring Road, Forest Hill, MD 21050

Subdivision N/A Lot Number N/A

Acreage/Lot Size 6.48 acres Election District Third Zoning R-2

Tax Map No. 40 Grid No. 1E Parcel 134 Water/Sewer: Private [ ] Public [X]

List ALL structures on property and current use: vacant

Estimated time required to present case: 1.0 hours

If this Appeal is in reference to a Building Permit, state number N/A

Would approval of this petition violate the covenants and restrictions for your property? No

Is this property located within the County's Chesapeake Bay Critical Area? Yes [ ] No [X]

If so, what is the Critical Area Land Use designations: N/A

Is this request the result of a zoning enforcement investigation? Yes [ ] No [X]

Is this request within one (1) mile of any incorporated town limits? Yes [ ] No [X]

Request

(1) Modify Special Exception for adult day care to increase maximum number of adult guests to 55

(2) Modify Special Exception for assisted living to increase maximum number of residents to 55.

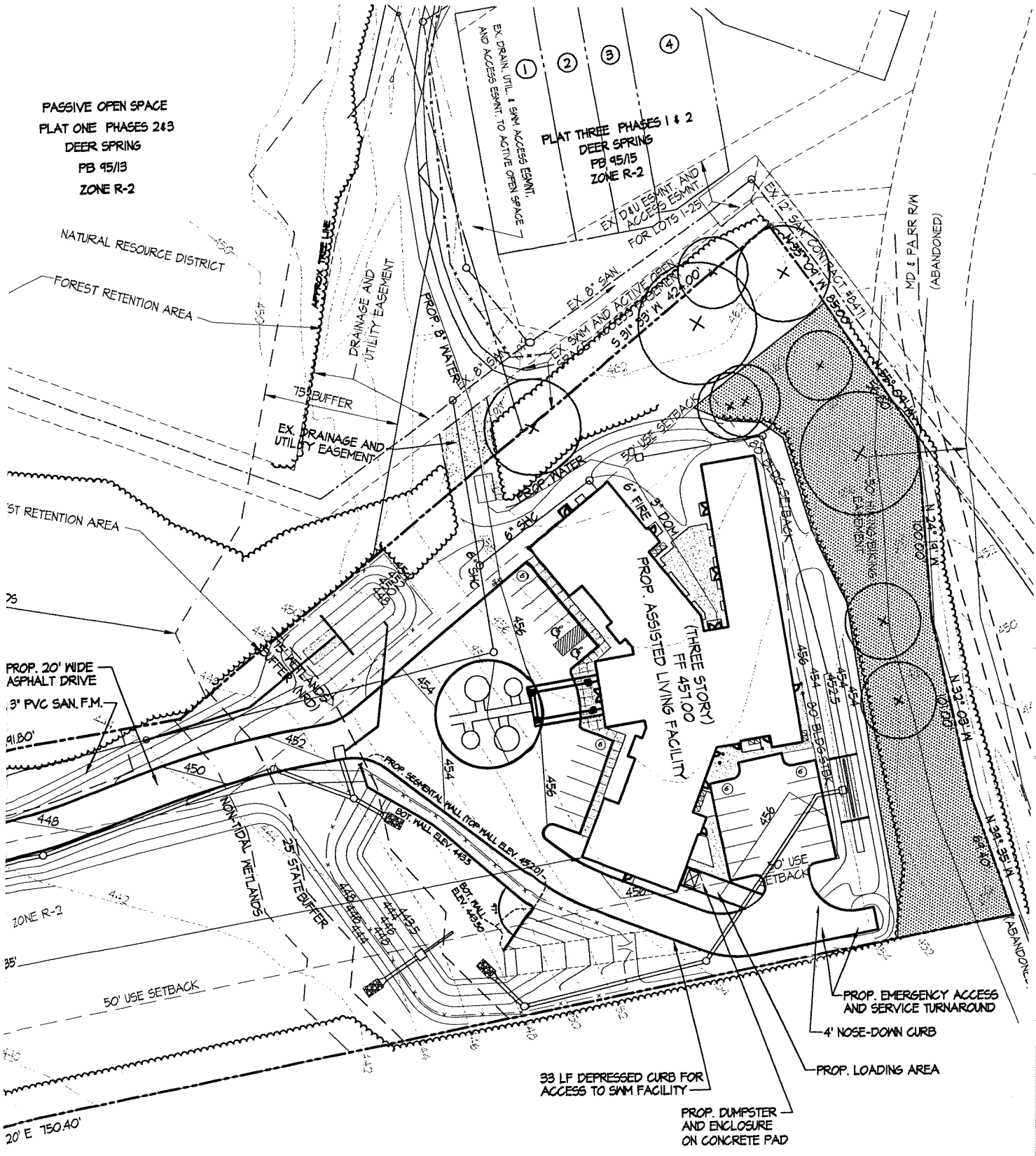
(3) Variance, if needed, to allow driveway/turnaround, stoop, utility and storm water appurtenances to be located within 50 foot use set-back

Justification

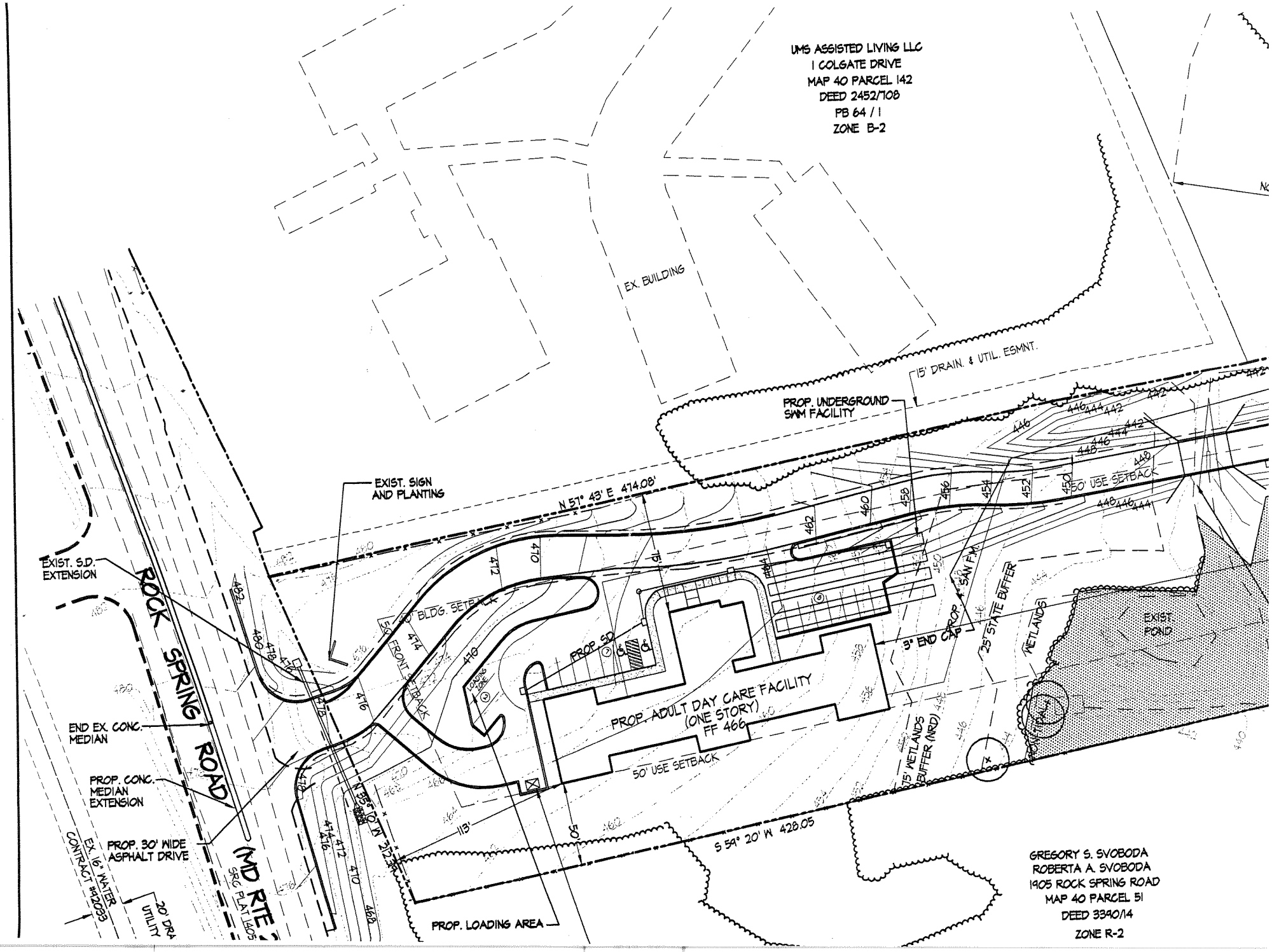
Project complies with all requirements of Code and will not have adverse impact different from those inherent in uses; if variance required, property unique due to shape, extent of NRD and surrounding uses (trail and veterinary clinic)

Strict compliance with Code would cause practical difficulty. No adverse impact on neighbors.

If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)



ROP. PRE-FABRICATED BRIDGE


UMS ASSISTED LIVING LLC
1 COLGATE DRIVE
MAP 40 PARCEL 142
DEED 2452/708
PB 64 / 1
ZONE B-2
EX. BUILDING
15' DRAIN. & UTIL. ESMNT.
PROP. UNDERGROUND SWM FACILITY
EXIST. SIGN AND PLANTING
N 57° 43' E 474.08'
50' USE SETBACK
EXIST. S.D. EXTENSION
ROCK SPRING ROAD
(MD RTE 2
SRC PLAT 1405
40' BLDG. SETBACK
50' FRONT SETBACK
PROP. SD
PROP. ADULT DAY CARE FACILITY (ONE STORY) FF 466
50' USE SETBACK
3" END CAP
PROP. 4" SAN F.M.
25' STATE BUFFER
WETLANDS
EXIST. POND
75' WETLANDS BUFFER (NRD)
END EX. CONC. MEDIAN
PROP. CONC. MEDIAN EXTENSION
PROP. 30' WIDE ASPHALT DRIVE
EX. 16" WATER CONTRACT #92033
20' DRA UTILITY
S 59° 20' W 428.05
PROP. LOADING AREA
GREGORY S. SVOBODA
ROBERTA A. SVOBODA
1905 ROCK SPRING ROAD
MAP 40 PARCEL 51
DEED 3390/14
ZONE R-2

BOARD OF APPEALS CASE NO. 5311	*	BEFORE THE
APPLICANT: Hart Heritage Properties LLP	*	ZONING HEARING EXAMINER
REQUEST: Special Exception, interpretation and variance for an adult day care center, and assisted living facility in the R2 District; 1913 Rock Spring Road, Forest Hill	*	OF HARFORD COUNTY
	*	Hearing Advertised
HEARING DATE: February 19, 2003	*	Aegis: 1/1/03 & 1/8/03 Record: 1/3/03 & 1/10/03
	*	

* * * * * * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicant, Hart Heritage Properties, LLP (Hart), is requesting a special exception, pursuant to Section 267-53C(4), of the Harford County Code, to allow an Adult Day care Center in an R2/Urban Residential District; a special exception pursuant to Section 267-53F(7), to allow an Assisted Living Facility in an R2/Urban Residential District; and an interpretation and/or variance pursuant to Section 267-36B, Table V, to allow a driveway/turnaround to be located within the 50 foot use setback in an R2/Urban Residential District

The subject parcel is located at 1913 Rock Spring Road, Forest Hill, MD 21050 and is more particularly identified on Tax Map 40, Grid 1E, Parcel 134. The parcel consists of 6.48± acres, is zoned R2/Urban Residential and is entirely within the Third Election District.

FACTS

The facts of the case are undisputed. For the Applicant, appeared three (3) witnesses: Michael Fisher, admitted as an expert landscape architect, Kenneth Skidmore, the Director of Hart Heritage Properties, LLC, and Mr. Lee Cunningham admitted as an expert land use and transportation planner. There were no persons who appeared in opposition.

Case No. 5311 – Hart Heritage Properties, LLP

The Applicant proposes to construct an Assisted Living Facility with Adult day care Center on its property. Services will be targeted at patients suffering Alzheimer's and dementia conditions. The Applicant already operates a similar facility on Grier Nursery Road but demand has outstripped the ability of that facility to serve all of the residents of Harford County that could benefit from the services provided by Hart. Hart proposes a facility capable of handling 40 patients in the assisted living facility and 36 patients in the day care facility. The parcel itself slopes away from Maryland Route 24 to the rear of the parcel. In the middle of the parcel is a springhouse and pond. There are NRD areas as well as wetland areas present on the property. The property and its natural features were described in detail. Exhibit 9 showed the natural features and buffer areas. The parcel is long and narrow and is bisected by wetlands located in the middle of the property. There is an existing bridge over the stream located near the middle of the parcel. The proposed driveway location utilizes the location of the existing bridge. The turnaround configuration that is located within the 50 foot use setback results form the unique features on the property, according to the testimony. The existing wetlands, stream, pond and associated buffers coupled with the elongated shape of the parcel result in a need for the variance in order to utilize both halves of the parcel. Without the variance, the testimony indicated 2/3 of the parcel would not be useable. Nearly 2.4 acres of this parcel is NRD area and the proposed variance minimizes disturbances to those sensitive features. The testimony also indicated that the subject parcel abuts large open space to the south and east, bordering the Ma & Pa Trail to the rear. The area is a mix of zoning districts and uses including R2 and R3 predominantly with B2, CI and GI existing. There is a veterinary clinic to the south. Each witness that testified concluded that the use proposed was compatible with the neighborhood and existing uses.

The Department of Planning and Zoning found that the parcel was unique and that the configuration proposed by the Applicant minimized disturbance to sensitive features on the property. Additionally, the Department of Planning and Zoning agreed that the proposed use at the proposed location would not have adverse impacts associated with its use that would require disapproval of the special exception use.

CONCLUSION

The Applicant, Hart Heritage Properties, LLP, is requesting a special exception, pursuant to Section 267-53C(4) of the Harford County Code, to allow an Adult Day care Center in an R2/Urban Residential District; a special exception pursuant to Section 267-53F(7), to allow an Assisted Living Facility in an R2/Urban Residential District; and an interpretation and/or variance, pursuant to Section 267-36B, Table V, to allow a driveway/turnaround to be located within the 50 foot use setback in an R2/Urban Residential District.

Section 267-51 of the Harford County Code provides as follows:

"Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1."

Section 267-52 of the Harford County Code provides as follows:

A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.

B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.

C. Extension of any use or activity permitted as a special exception shall require further Board approval.

D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.

E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.

The Harford County Code, pursuant to Section 267-11, permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code 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 Code or the public interest."

Turning to the specific requirements of the Harford County Code set forth in Section 267-53C(4) and 267-53F(7), the Hearing Examiner concludes that the Applicant's request meets or exceeds each and every requirement of those Code provisions. Those findings are specifically as follows:

Section 267-53C(4)

(4) Day Care Centers

(1) A minimum parcel area of one-half acre is established

The parcel consists of 6.48 acres.

(2) Access to the facility shall be from an arterial or collector road with all outdoor play areas located in a solid-fenced or screened area in the rear of the building.

The property fronts on Rock Spring Road, a designated Arterial-Urban Road. No play area is proposed as this an adult day care center.

(3) The operation may be conducted in a previously existing structure, or, if a new structure is constructed, the architecture of the building shall be harmonious with other architecture in the neighborhood.

Renderings of the proposed structures were presented during the Hearing before the Hearing Examiner. The hearing Examiner finds the structures to be compatible in size and architectural style with other structures in this neighborhood and the R2 zone. The buildings proposed are similar to the Assisted Living Facility operated by Hart on Grier Nursery Road.

(4) *If the operator of a day-care center operated in a church, private school or public school has obtained a zoning certificate under the provisions of Section267-26D(12) of this chapter, the day-care center is exempt from the requirements of this subsection C(4).*

Section 267-53F(7)

(7) Nursing homes and assisted living facilities. These uses may be granted in the AG, RR, R, R1, R2, VR, VB, and B1 districts provided that:

(a) A minimum parcel area of five acres is established and a maximum building coverage of 40% of the parcel is provided.

The parcel is 6.48 acres. The two proposed buildings total 21, 200 square feet which is only 7.5% of the total parcel area. Total impervious surface proposed is only 27% of the total parcel area.

(b) The setbacks of the district for institutional uses must be met.

All setbacks are intended to be met as regards the structures on the parcel. The driveway will encroach into the 50 foot setback and will be within 10 feet of the property line near the northern and southern border of the parcel. The Applicant has requested a variance from the provisions of this section which is discussed separately.

(c) The density shall not exceed 20 beds per acre of parcel

A total of 129.6 beds would be allowed. Only 40 are proposed.

In evaluating any special exception use, the Hearing Examiner is required to turn to the provisions of Section 267-9I of the Harford County Code.

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

This area of the County is a mix of uses including commercial, institutional and residential uses. There should be no unexpected adverse impacts associated with this particular use at this particular location.

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

The property is on a State Principal Arterial Road. The facility will generate negligible traffic. Sight distance is good at this location.

(3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

The proposal is a use that is permitted by way of special exception in the R2 district with Board approval. The use should not adversely impact the neighborhood. There is no reason to believe that should the use be approved, the proposal will have any adverse fiscal impacts on the County. Moreover, there is a significant need for such a facility and the services it provides to the community.

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

There should be no impacts in this regard.

(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.

Police protection will be provided by the County's local Sheriffs Department and the Maryland State Police. Fire protection will primarily be from the Forest Hill Voluntary Fire Department. County water and sewer will be provided. A sediment control facility may be required and, if required, will necessarily need to meet the standards of the Harford County Health Department and generally accepted engineering principles and practices. Trash collection will be handled by a private hauler.

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

The proposal is recognized by the Code as a use that is compatible with other uses in the R2/Urban Residential District, provided certain requirements can be met and absent evidence rebutting the presumption of compatibility.

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

There are churches, parks and schools in the overall community but no such structures or uses will be adversely impacted by the proposed use.

(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.*

The proposed use is recognized as a use that can co-exist compatibly with other uses permitted in the R2/Urban Residential District.

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

The proposed use accounts for the natural features existing on the property that, in large part, contribute to the need for the subject request for a minor setback variance Disturbance of natural features has been minimized by the proposed plan.

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

Not applicable to the request.

The Hearing Examiner finds that the Applicant can meet or exceed each and every specific statutory requirement of the Harford County Code with the exception of a minor setback variance associated with the driveway. As to the request for variance to allow the driveway to be located within the 50 foot setback and pursuant to Section 267-11 of the Harford County Code, the Hearing Examiner finds that the parcel is uniquely configured. Further the proposed variance will not materially impair the purposes of the Code nor will any adverse impacts to adjacent parcels result from approval. A denial of the request would effectively deny the Applicant of the use of 2/3 of the subject parcel, making it impossible to construct and operate a use permitted by way of special exception.

In addition to specific statutory requirements, Maryland Courts have had occasion to discuss the burden of proof that must be met by an applicant in a special exception case. Under Maryland law, the special exception use is 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 fact or circumstance 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 a particular case is in harmony with the general purpose and intent of the plan. Schultz v. Pritts, 291 Md. 1, 432 A. 2d 1319, 1325 (1981) ("Schultz").

> "While the applicant in such a case has the burden of adducing testimony, which will show that, his use meets the prescribed standards and requirements of the zoning code, he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely effect 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; but if there is not probative evidence of harm or disturbance in light of the nature of the zoning involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for special exception is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54- 55, 310 A. 2d 543, 550-551 (1973) ("Turner").

The appropriate standard to be used in determining whether a requested special exception use should be denied is whether there are facts and circumstances that show the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." See Schultz at 432 A. 2d 1327.

Such facts and circumstances must be strong and substantial to overcome the presumption that the proposed use be allowed in the district. Anderson v. Sawyer, 23 Md. App. 612, 329 A. 2d 716, 724 (1974) ("Anderson").

The law in Maryland is clear that the localized impact caused by a special exception must be unique and atypical in order to justify denial. Sharp v. Howard County Board of Appeals, 98 Md. App. 57, 632 A. 2d 248 (1993) ("Sharp").

In determining whether the presence of the proposed uses would be more harmful here than if located elsewhere in the AG zone, one must take into account the area where the use is proposed. AT&T Wireless Services v. Mayor and City Council of Baltimore, 123 Md. App. 681, 720 A. 2d 925 (1998) ("AT&T").

In Mossburg v. Montgomery County, 107 Md. App. 1, 666 A. 2d 1253 (1995) ("Mossburg") the Court of Special Appeals had occasion to restate and clarify the law in Maryland regarding special exceptions. There the Court found that the Board of Appeals of Montgomery County improperly denied a special exception for a solid waste transfer station in an industrial zone. In reversing the Circuit Court, which upheld the Board's decision, the Court of Special Appeals found that the decision to deny the special exception was not based on substantial evidence of adverse impact at the subject site greater than or above and beyond impact elsewhere in the zone and, therefore, the decision was arbitrary and illegal. There the Court said:

> "The question in the case sub judice, therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly it will and those adverse ffects are contemplated by the statute. The proper question is whether those dverse effects are above and beyond, i.e. greater here than they would generally be elsewhere within the areas of the County where they may be established, ... In other words, if it must be shown, as it must be, that the adverse effects at the particular site are greater or "above and beyond", then it must be asked, greater than what? Above and beyond what?

> Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere." (emphasis supplied)

Thus, the Court of Special Appeals emphasized that once the applicant shows that it meets the requirements for the special exception under statute, the burden then shifts to the Protestants to show that impacts from the use at a particular location are greater at this location than elsewhere. If the Protestants fail to meet that burden of proof, the requested special exception must be approved.

In this case there was no opposition testimony presented and the testimony of the Applicant's witnesses was sufficient to bear the burden of proof. The Hearing Examiner, for the foregoing reasons recommends approval of the requested special exception uses and the request for variance subject to the following conditions:

1. The Applicant obtain any and all necessary permits and inspections.
2. The number of clients in the adult day care center shall be limited to 36. Any increase shall be subject to further review by the Board of Appeals.
3. The number of patients in the assisted living facility shall be limited to 40. Any increase shall be subject to further Board of Appeals review.
4. A final landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval.

Date MARCH 21, 2003

William F. Casey
Zoning Hearing Examiner