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| **APPLICANTS:**<br>**William Milway and Linda Milway**<br>**Shelter Development, LLC** | **BEFORE THE**<br><br>**ZONING HEARING EXAMINER** |
| **REQUEST: A special exception to permit an assisted living facility in a R1 District** | **FOR HARFORD COUNTY**<br><br>**BOARD OF APPEALS** |
| **HEARING DATES: March 30, 2005 and June 15, 2005** | **Case No. 5469** |

# ZONING HEARING EXAMINER'S DECISION

**APPLICANTS**: William Milway and Linda Milway
Shelter Development, LLC

**LOCATION:** 1703 Patterson Mill Road, Bel Air, Maryland
Tax Map: 56 / Grid: 1D / Parcel: 298, 377
Third Election District (3rd)

**ZONING:** R1 / Urban Residential District

**REQUEST:** A special exception, pursuant to Section 267-53F(7) of the Harford County Code, to permit an assisted living facility in an R1 District.

**TESTIMONY AND EVIDENCE OF RECORD:**

First testified David Carliner, who identified himself as employed by Shelter Development, LLC (hereinafter sometimes referred to herein as "Shelter" or the "Applicant").

Mr. Carliner's specific responsibilities include identifying sites for potential development and obtaining all approvals and permits for Shelter's intended use. Shelter has been in existence for approximately 25 years and has constructed over a billion dollars of development projects. Currently, Shelter has three projects in Harford County, all being assisted living facilities. Shelter is the contract purchaser of the property which is the subject of this application and which is owned by William and Linda Milway.

Mr. Carliner explained that Shelter is seeking permission to construct an assisted living facility for seniors. The average age of the residents would be approximately 78 years old. The facility would provide meals, transportation, activities and assistance for residents with their daily activities. The projected population would be 114 residents, who will live and be cared for at the facility on a twenty-four hour basis. The units will rent for $2,000.00 to $4,000.00 per month.

Shelter will have numerous employees on site, including administrative and health care personnel. Shelter owns and operates another facility approximately two miles from the subject property, which is at almost 100% occupancy. Mr. Carliner described a huge demand in Harford County for this type of assisted living facility. The proposed site lends itself to this type of use. The building will face onto Emmorton Road, with most of the site backing up to woodlands and wetlands. The property is zoned R1. Two parcels will be subdivided out, and the remaining lands will be owned by Mr. and Mrs. Milway. The exterior of the facility will be vinyl and stone. The Emmorton Road side will be landscaped. The facade will be somewhat irregular to help give it a residential appearance.

These types of communities do not generate a significant amount of traffic. Only a few residents will have cars. Staff will come by car, although traffic should be minimal in Mr. Carliner's experience. Shelter has contacted numerous communities surrounding the property, including Barrington, Glen Gate and Carsins' Ridge. In general, according to Mr. Carliner, their reaction has been positive. Concerns expressed by those community members included creation of a berm, storm water management, traffic worries and lighting.

Mr. Carliner stated that project should be a benefit to the community, and will have little traffic impact. He also feels that facility will provide opportunities for partnership learning experiences with students at the future Middle and High Schools located on Patterson Mill Road.

All conditions recommended by the Department of Planning and Zoning are acceptable to Shelter.

Gary Ambridge, a resident of 1602 Waterbury Court, Bel Air, Maryland questioned Mr. Carliner. In response to his questions, Mr. Carliner stated that there would be total of thirty-one full-time equivalent employees on the property. Mr. Ambridge expressed his desire for the area not to turn into another 'Cockeysville'.

Mr. Carliner also stated that the deck shown on the site plan is necessary for outdoor dining, and to give the residents an opportunity to enjoy the outdoors.

Upon cross-examination by John R. Scotten, Jr., who resides at 1553 Emmorton Road, Bel Air, Maryland, Mr. Carliner indicated that the building will be three stories in height.

Upon cross-examination by Sal Sabatino, a resident of 1816 Barrington Village Court, Mr. Carliner indicated that the remaining parcel was being retained by the Milways, and was not being offered to Shelter. Mr. Carliner was not familiar with the Milways' plan for the remaining parcel. The building could not be moved further from Emmorton Road because of the wetlands to the rear.

Under cross-examination by Kevin Olszewski, of 113 Glenmore Court, Mr. Carliner indicated that a similar project was located approximately 100 yards east of the subject property. However, the other property has both an assisted living and a nursing home component and is somewhat different than the proposal for the subject property. It has approximately 120 units with a waiting list.

The Brightview facility also operated by Shelter has about 100 residents, and thirty full-time equivalent employees.

Next for the Applicant testified Torrence Pierce, a professional engineer with Frederick Ward Associates, Inc. Mr. Pierce identified himself as a Vice-President with the firm, managing site design, CAD design, storm water management design and other projects. He has worked on approximately 50-100 various site designs in his professional career, and has testified in excess of twenty times before the Board of Appeals. Mr. Pierce was offered and accepted as an expert civil engineer.

Mr. Pierce identified the subject property as containing about 7.7 acres overall, with the owner planning to retain about 1.5 acres, leaving a remaining parcel of 5.2 acres. The site drains from the southwest to the northeast, across the wetlands to the rear of the Shelter parcel. The proposed building area is about 33,600 square feet, with the building itself to be about 400 feet long. Water and sewer is available to the site. The site lies slightly below the grade level of Maryland Route 924. The parking lot will be slightly lower the travel portion of Maryland Route 924. The design of the storm water management facility has not been completed but it should be a typical facility. While the storm water management facility will not be a wet pond, some water will be allowed to collect in it order to help with water quality.

The property should not harm in any way the non-tidal wetlands on site. In Mr. Pierce's opinion, the project complies with all applicable standards.

Under cross-examination by Mr. Scotten Mr. Pierce described the proposal as being similar to Park View at Bel Air, although the building will be three, not four, stories in height. Park View at Bel Air has more vegetation screening than the proposed project.

According to Mr. Pierce a four-foot berm could be constructed along the southern edge of the property line, although one could not be built along the northern part because of the fairly significant drop-off and grade at that location. The Barrington subdivision, which has a berm, also had more available space. Mr. Pierce indicated that the proposed building could not be pushed back into the wetlands, which limits the amount of available space for a berm along Route 924.

Mr. Pierce further indicated that the parking spaces required by County Zoning Regulations are exceeded by 16 spaces.

The storm water management facility will be similar to that at the Church of the Good Shepard. The pond will more than likely be fenced. A split-rail fence would be more attractive than the planned chain link fence, but Harford County must give its approval.

Next for the Applicant testified Ken Schmid, offered and accepted as an expert traffic engineer. Mr. Schmid had prepared a Traffic Impact Study at the request of Harford County for the proposed assisted living facility. That study took into account projects not yet built but planned. His Traffic Impact Study established existing traffic conditions, and studied seven major intersections, both signalized and un-signalized, including the Patterson Mill Road and Route 924 intersection, which is planned to be signalized within the next three to four months. In order to be considered adequate, intersections must function at a level of service of "D" or better. At a "D" level of service an average delay is 55 seconds or less.

Mr. Schmid's study contained traffic counts at potentially impacted intersections. Background levels include approved but not yet constructed subdivisions. Ten such subdivisions were identified, including the High School and Middle School proposed for Patterson Mill Road. These factors were then used to determine the expected impact of the proposed use.

Mr. Schmid concluded that the proposal will not generate a high degree of peak hour traffic flow. Generally, the highest traffic flow to be generated by the proposal falls outside of. normal peak hour drive times. He also found that the actual impact on the road system of the proposal is very light. His study indicated that all intersections will continue to operate at level "D" or better, even with the traffic to be generated by the proposed use.

Mr. Schmid indicated that the site could be workable without a separate access onto Route 924, but he much prefers to retain that access which will help to distribute traffic around the site.

Next, Mr. Schmid stated that his traffic generation models showed that the site will generate approximately 10 vehicles out and 6 vehicles in during the morning peak hour; and 11 vehicles in and 14 vehicles out during the afternoon peak hour. The actual peak traffic time for the subject property will be roughly 6:00 to 7:00 in the morning, with 14 vehicles in and 7 out; and 2:30 to 3:30 in the afternoon, with 18 vehicles in and 22 out. Mr. Schmid indicated the peak traffic times were somewhat different from normal morning and afternoon peak traffic hours. Mr. Schmid's report (at page 22) indicated that Route 924 and Patterson Mill Road intersection functioned at no worse than level service of "D". He indicated that the average delay for northbound flow at that intersection in the afternoons is 38 seconds. To change that service of level to "E" (which would be unacceptable), the delay would have to be 55 seconds or greater.

Upon cross-examination by Kevin Olszewski, Mr. Schmid indicated that his analysis took into account 700 projected students at the Middle School on Patterson Mill Road, and 900 projected at the High School. This adds 300 trips per day through the intersection, with 150 in and 150 out.

If the subject property was developed as single-family units the expected traffic volume would be ten trips per day, per unit.

Mr. Schmid also indicated that his analysis did not take into account a possible fire station at the corner of Patterson Mill Road across Route 924 and across from the subject property. However, he feels that if the fire hall were to hold social events, generally those events would not add to peak traffic flows as they are held during the evenings on the weekends. Mr. Schmid indicated that the amount of traffic coming to and from the proposed facility could be doubled and there would still be no resulting adverse impact on the intersection at Route 924 and Patterson Mill Road.

Next for the Applicant testified Craig Ward, offered and accepted as an expert in land planning, zoning and as a professional engineer.

Mr. Ward indicated that he is familiar with the property, and found the Staff Report to be fully accurate. He believes that the proposal is in compliance with the Harford County Comprehensive Plan. The subject property is in a transitional land use area, with properties to the south and southwest becoming more intensely developed. The properties to the south have a somewhat mixed zoning, being RO, R1 and R2, and include some commercial strip centers. Mr. Ward feels that the subject property would act as a transition between the less densely populated districts north and the more densely utilized properties to the south.

Mr. Ward further stated the proposal complies with all Harford County Zoning Code requirements. The wetlands behind the building will help buffer the proposed use from Glen Gate and those properties to the east. The remaining RO zoned parcel should also act as a buffer.

Mr. Ward stated that the owner could possibly get a “bump-up” in development type to R2 building type because of the amount of wetlands on site.

This is a corner lot, located at signalized intersection. Given the transitional nature of the area, Mr. Ward believes the proposed use to be very appropriate. He also stated that a request for RO zoning has been made for the property which is now pending in the current comprehensive zoning review. The property could be developed for up to ten single-family homes, but he does not believe that would be best use of this property.

Mr. Ward believes that the proposed use would have no more of an impact at the subject site than it would elsewhere within the zone. This is fairly low intensity use, with little impact on traffic. Existing wetlands and woodlands will provide protection to adjoining property owners.

Next for the Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that all applicable development regulations and building regulations had been met, including those of Section 267-9(I). There should be no adverse impact from the proposal. No substantial amount of traffic should be generated, and there will be no significant impact on the intersection. Mr. McClune stated that the proposed fire station at the intersection of Patterson Mill Road and Route 924 is to be used for storage of equipment only, and there will be no social hall or social activities.

Mr. McClune requested, however, that a condition be added that the building be constructed in substantial compliance with the elevations presented at the hearing.

John R. Scotten, Jr. then testified in opposition. Mr. Scotten owns the adjacent parcel of property. Mr. Scotten complained about his difficulty in obtaining a meeting with Mr. Carliner.

Mr. Scotten is mainly concerned about the size of the structure, being 400 feet in length, and its close proximity to Route 924. Mr. Scotten introduced photographs of the Shelter property on Atwood Road in Bel Air. Mr. Scotten noted that the property on Atwood Road was well screened, whereas the subject property does not have the same advantages. Mr. Scotten also introduced various photos showing berms in the area and other properties which were screened. Mr. Scotten believes that the property should be screened and/or bermed as that would be more in keeping with the community that surrounds the property. He also objected to a chain link fence around the storm water management facility.

On June 15, 2006 the hearing was reconvened. At that time testified David Carliner. Mr. Carliner introduced, on behalf of the Applicant, an amended site plan. This was marked as Exhibit “1". This site plan, revised since the last hearing date, pushes back the building approximately six to seven additional feet from the roadway, and shows a berm to be constructed along Maryland Route 924. Mr. Carliner stated that this berm will be similar to others along portions of Route 924 on other properties. The berm itself, because of existing topography, is not level in the area of Route 924, but instead varies in height up to 4 feet.

Also introduced as the Applicant's Exhibit "2" was a drawing showing the proposed berm along the subject property. Mr. Carliner explained that the berm will be, because of the existing elevation, less pronounced along the area of the proposed northern entrance, rising in height to about 4 feet closer to the intersection of Patterson Mill Road. Mr. Carliner expressed his opinion that the berm will effectively help shield the building from passing traffic and users of Route 924. The Applicant is asking that no other part of its submittal be amended.

Next testified Anthony McClune of the Harford County Department of Planning and Zoning. The Department has reviewed the Applicant's amended site plan. The Department supports the amended site plan as presented, and again recommends that the originally proposed conditions be imposed.

Next testified John R. Scotten, Jr., a neighbor who originally testified in opposition to the request. Mr. Scotten has reviewed the revised plan. He stated that his objections had been met and he is withdrawing his opposition to the proposal.

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

**APPLICABLE LAW:**

Section 267-53F(7) of the Harford County Code allows:

"(7) Nursing homes and assisted living facilities. These uses may be granted in the AG, RR, R, R1, R2, VR, 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.

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

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

Section 267-9I of the Harford County Code, "Limitations, Guides and Standards" is also applicable and will be discussed below.

## Case No. 5469 - William & Linda Milway; Shelter Development LLC

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

Shelter Development, LLC is proposing an assisted living facility on a 5.2 acre parcel, zoned R1/Urban Residential District, to be located on the northeasterly corner of the intersection of Patterson Mill Road and Route 924. The subject parcel itself is to be subdivided from a larger 7.70 acre parcel. The proposed project will be a three-story structure, with a capacity of 114 beds. Fifty-three parking spaces are required by Code. The Applicant proposes 69 parking spaces.

The Applicant's request is for a special exception pursuant to Code Section 267-53F(7).

Maryland Route 924 is a relatively heavily traveled roadway. Evidence of record indicates that at least some of the other properties that front on Route 924 have established berms along their frontage. The existence of those berms, while not in all instances completely blocking the impact or view or Route 924, nevertheless serve a useful and beneficial purpose in helping to mitigate the impact of such a heavily traveled route on those surrounding properties. It should also be noted that while not every property is bermed, it is a relatively common feature in the area.

Shelter is to be commended for proposing a site plan which integrates a berm along Route 924. While the size, topography and natural features of the site limit the size of the berm, it should nevertheless be a valuable design feature, one which is in keeping with the neighborhood, and one which should help mitigate the impact of Route 924.

The proposed assisted living facility is allowed as a special exception on the subject property. It is a use which seems particularly well suited for the proposed site. It is to be located at the corner of a major intersection, a site which is easily accessible by residents, their relatives, staff and medical personnel. It is a fitting use of the subject property which, because of the heavy and increasing volume of traffic on Route 924, is a less than ideal site for more typical residential uses.

Neighbors have testified in opposition and have expressed some concern about the traffic impact of the proposal. However, the evidence presented leads to the clear conclusion that traffic impact will be minimal, if not non-existent. Furthermore, there was uncontradicted testimony that a assisted living use is generally not a generator of large traffic volumes.

Special exceptions, of course, share the presumption that they are in the best interest of the general welfare and are accordingly presumptively valid. See People's Counsel v. Mangione, 584 A.2d 1318 (1991). A special exception is analogous to a principal permitted use in that it permitted in its particular district, provided all specific, and general conditions are met. There must further, as part of this analysis, be a finding that there is no greater harm at the proposed location than there would, by this or a similar use, at any other permitted location within the zone. See Schultz v. Pritts, 291 Md. 1 (1981).

Accordingly, it must first be determined that this particular special exception use meets its specific requirements. Those requirements are as follows:

*Section 267-53F(7), Nursing Homes and Assisted Living Facilities. These uses may be granted at 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 subject property is located in a R1 zoning district, and will consist of 5.2 acres. The maximum building coverage of this site will be 13.5% which is considerably less than the 40% required by this section.

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

These setbacks have been met. The applicable setbacks are 50 foot front yard setback, 40 foot side yard setback, and 80 foot rear yard setback. All setbacks are accordingly met

*(c) The density shall not exceed 20 beds per acre of the parcel."*

The Applicants propose a 114-bed facility on a 5.2 acre parcel. Accordingly, this requirement is met.

It is therefore found that the specific special exception requirements of Section 267-53F have been met. The generalized standards of Section 267-9I, "Limitations, Guides and Standards" must then be examined to ascertain that there are no real or potential adverse consequences which could mitigate against the proposal.

*Section 267-9I, "Limitations, Guides and Standards".*

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

The subject property is located within the County's development envelope, in an area which contains numerous residential and commercial developments. The facility will help meet both community and regional needs. There should be no recognizable impact on or by people living or working in the subject 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.*

The Applicant has submitted a Traffic Impact Study dated February, 2005. The analysis shows no adverse traffic consequence from this development. While certain neighbors have expressed concerns that the proposal would present a potentially adverse traffic impact, no persuasive evidence was presented to support this assertion. There is, in fact, no substantial evidence, or even persuasive suggestion, that a 114-bed assisted living facility would potentially impact existing or future traffic on Route 924 or Patterson Mill Road. As pointed out above, assisted living facilities generally do not generate large or unusual amounts of traffic. Other allowable uses of this site could have a much more adverse impact on traffic.

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

The proposed use is consistent with the development in the area. There appears to be no adverse fiscal impact on the County.

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

No real or potential issue concerning odors, dust, gas, smoke, fumes, vibration, glare or noise has been identified.

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

The County Sheriff's Office and the Maryland State Police will provide police protection. The Bel Air and Abingdon Volunteer Fire Companies will provide fire protection. The property will be served by public water and sewer facilities. A company of the Applicants' choice will handle garbage and trash collection.

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

The proposal, as discussed above, is for a special exception. Special exceptions have been legislatively predetermined to be permitted in particular zoning districts, provided the specific and generalized conditions attached by the Development Regulations are met. The proposed special exception meets all applicable criteria.

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

The proposal is within an area of mixed residential, commercial and institutional uses. To the north is a church; to the south is a proposed location of a volunteer fire facility; to the southeast, along Patterson Mill Road is the site of the future Patterson Mill Schools. The proposal is fully compatible with these and other allowable uses.

*(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.*

No adverse impact on any of those existing uses has been identified. The proposal is compatible with existing Development Regulations.

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

Non-tidal wetlands and associated buffers are located to the rear of the property. The proposal will not impact in those areas, nor has any potential impact been identified.

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

No such landmarks have been identified.

## Case No. 5469 - William & Linda Milway; Shelter Development LLC

**CONCLUSION:**

Accordingly, it is recommended that the requested special exception be granted, subject to the following conditions:

1. The Applicants shall submit a detailed site plan to be reviewed by the Department of Development Advisory Committee (DAC). The plans submitted to the Department of Planning and Zoning shall be in general compliance with the plan submitted to the Board. The proposed berm shall not be decreased, nor shall setbacks be changed from those shown on the plans submitted to the Board of Appeals. Lighting plans shall be submitted for review and approval by the Department of Planning and Zoning.

2. A final Traffic Impact Analysis shall be submitted at the time of site plan submittal.

3. The Applicants shall submit an architectural rendering of the proposed building to the Department of Planning and Zoning for review and approval.

4. The Applicant shall construct the building in substantial compliance with the elevations presented before the Hearing Examiner.

5. The storm water management facility shall be enclosed by a split-rail fence.

6. The Applicants shall obtain all necessary permits and approval for the development and construction of the facility.

Date: July 25, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on AUGUST 22, 2005.**