

IN THE MATTER OF : BEFORE THE

LOIS PETERS T/A : HOWARD COUNTY
INTERNATIONAL HEALTH CARE : BOARD OF APPEALS
CONSULTANTS :

Petitioner : HEARING EXAMINER

: BA Case No. 11-001C

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DECISION AND ORDER

On May 19, 2011, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure heard the petition of Lois Peters, T/A International Health Care Consultants, for approval of a Residential Care Facility for a maximum of 13 residents in an RR-MXD-3 (Rural Residential - Mixed Use) Zoning District, and for a reduced rear setback as may be authorized by the Hearing Examiner, filed pursuant to Section 131.N.37 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the Petitioner. Lois Peters testified in favor of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The property is located in the 5th Election District on the north side of MD 216 (Scaggsville Road) about 1600 feet west of Maple Lawn Boulevard and has a street address of 11584 Scaggsville Road (the Property). The Property is referenced as Tax Map 41, Grid 21, as Parcel 476.

2. Property Description. The 3.0-acre, generally rectangular Property has about 500 frontage feet on MD 216. A one-story brick, mid-center residential structure lies about 200 feet from the front property line. To its rear is a three-bay garage structure sited about 35 feet from the rear property line, according to the conditional use plan. A paved driveway located about 60 feet from the southwest lot line provides access to the site. It extends along the Property's western edge, then branches to the east to form a loop around the residence. Three parking spaces are situated near the residence's southeast corner. Four spaces are located in the southeast corner of the parking area in front of the residence and ten spaces are behind the residence and garage.

3. Vicinal Properties. Adjoining properties to the north, east and west are zoned RR-MXD-3 (Rural Residential - Mixed Use). Parcel 115 to the north and west is the 101-acre site of Reservoir High School.

4. Roads. MD 216 has one travel lane in each direction in the Property's vicinity and a variable paving width within a variable width right-of-way. According to State Highway Administration data, the traffic volume on MD 216 west of US 29 was 17,672 average daily trips as of 2009.

5. Water and Sewer. The property is served by public water and sewer. A Technical

Staff Report (TSR) addendum recommends commencement of the conditional use be conditioned upon the Petitioner's demonstration that all necessary permits for connections to the public sewer system as may be required for an assisted living facility have been acquired and all associated fees have been paid by a date specified by the Hearing Authority.

6. General Plan. The Property is designated as an Existing or Proposed Mixed-Use Center on the 2000-2020 Policies Map of the 200 General Plan. MD 216 is depicted as a Minor Arterial on the 2000-2020 Transportation Map of the 2000 General Plan.

7. Zoning History. DPZ issued CE 10-030, a code enforcement notice of violation to the Petitioner on December 10, 2010 for housing eight mentally and/or physically disabled persons without a resident family and operating without a conditional use approval for Nursing Homes and Residential Care Facility with 13 beds on RR zoned property.

8. The Proposal. The Petitioner is seeking approval to operate a 13-bed assisted living facility (the Facility) on the Property. The facility will operate 24 hours per day, seven days a week with four to five employees. There will be 17 striped parking spaces on the Property. The Petitioner would also like to use the block building depicted as about 35 feet from the rear lot line for storage and this is discussed in Part II.

9. Ms. Peters testified she has been licensed by the state for an eight-bed use since 2003 and apparently, is also licensed for the proposed 13-bed operation. The only changes to the Property will be the striping of parking spaces and the use of the rear building. The Petitioner will employ four-five employees, including two office employees working 9:00 a.m. – 5:00 p.m. in the 1000-square foot basement. A van infrequently picks up residents for

appointments and visitors come daily to see residents.

10. Ms. Peters further testified that a company hooked up the Property to water and sewer. An old well will be inspected for lawn use only. When the company applied for a hook-up, it paid \$600 instead of the \$1,800 fee required for sewers

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. Harmony with the Plan

Section 131.B requires me to evaluate the proposed conditional use's harmony with the land uses and policies indicated in the Howard County General Plan for the RR zone. When evaluating a plan under this standard, I must consider (a) the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and (b) if a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate, given the adequacy of proposed buffers and setbacks.

In this case, the proposed use of the Property as a residential care facility for up to 13 occupants is generally compatible with the surrounding properties, which are primarily commercial and institutional uses. The use of a dwelling on a three-acre site as a residential care facility with a maximum of 13 residents would not create adverse impact on adjacent properties. The proposed use is limited in nature and intensity and will utilize only a small portion of the Property. Access will be provided off the existing driveway, which appears to

provide safe access. I conclude that the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are appropriate, in accordance with Section 131.B.1.

2. Adverse Impacts.

a). Physical Conditions. The proposed use will be operated predominately indoors, and will not generate undue dust, fumes, odors, or noise. The Petitioner proposed no outdoor lighting. I conclude that any adverse impacts such as noise, dust, fumes, odors, lighting, vibrations, hazards, or other physical conditions will not be greater at the original site than generally elsewhere, in accordance with Section 131.B. 2.a.

b). Structures and Landscaping. No additions to the existing structure are proposed. The existing structure is separated by distance from other area commercial and institutional structures. Subject to the denial of the reduced setback for accessory use of the block building, I conclude the structure, walls and fences, and the nature and extent of the landscaping on the site are such that the use would not hinder or discourage the development and use of adjacent land and structures more at the subject site than generally elsewhere, in accordance with Section 131.B. 2.b.

c). Parking and Loading. Section 133.D.7 of the Zoning Regulations requires one parking space per two beds. The proposed use must therefore provide seven parking spaces and the conditional use plan depicts 17 paved parking spaces. It appears the proposed use will provide an adequate amount of parking, in accordance with Section 131.B. 2.c.

d). Ingress/Egress. The ingress and egress drive will continue to provide safe access with adequate sight distance, based on actual conditions, in accordance with Section 131.B. 2.d.

II. Specific Criteria for Nursing Homes and Residential Care Facilities (Section 131.N.37)

a. The facility shall have 16 or fewer beds.

The Proposed Use will have a maximum of 13 beds, in accordance with Section 131.N.37.a.

b. The lot for which the home is proposed is at least 40,000 square feet in size.

Because the Property is three acres in area, it complies with Section 131.N.37.b.

c. The design of new structures or additions to existing structures will be compatible in scale and character with residential development in the vicinity, as demonstrated by architectural elevations or renderings submitted with the petition showing.

The facility is a conversion of an existing residence and the Petitioner is not proposing any additions. The proposed facility complies with Section 131.N.37.c.

d. Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially- zoned properties other than public road right-of-ways. The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater, if:

(1) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or

(2) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring residential properties.

The Petitioner is seeking to use the block building sited about 35 feet from the rear property line, which adjoins the Reservoir High School parking lot. The TSR estimates the

building's setback as about 40 feet. The rear setback for an accessory structure in the RR-MXD-3 district is 10 feet, so the 20-foot minimum setback applies. Although the adjoining land is committed to a long-term institutional or open space use, the Hearing Examiner may not approve a reduced setback for the accessory use of the block building because it does not meet the 20-foot minimum setback.

e. At least 20 percent of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.

The Petitioner's plans do not indicate the percentage of open space. However, the TSR reviewed the plan and aerial photographs of the Property and made the determination that at least 20 percent of the building envelope will be green space, in accordance with Section 131.N.37.e.

ORDER

Based upon the foregoing, it is this 9th day of June 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

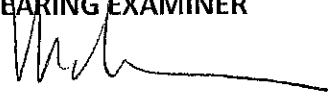
That the Conditional Use petition of Lois Peters, T/A International Health Care Consultants, for a reduced rear setback in an RR-MXD-3 (Rural Residential - Mixed Use) Zoning District, as may be approved by the Hearing Authority pursuant to Section 131.N.37.d. is **DENIED.**

That the Conditional Use petition of Lois Peters, T/A International Health Care Consultants for a Residential Care Facility for a maximum of 13 residents in an RR-MXD-3 (Rural Residential - Mixed Use) Zoning District, filed pursuant to Section 131.N.37 of the Howard County Zoning Regulations (the "Zoning Regulations") is **GRANTED;**

Provided, however, that:

1. The Petitioner shall demonstrate to DPZ that it has paid all required water and sewer fees no later than 21 calendar days from the date of this decision and order.
2. The Petitioner shall address all agency comments no later than 21 calendar days from the date of this decision and order.
3. The conditional use shall apply only to the conditional use for a residential care facility for a maximum of thirteen residents as described in the petition and depicted on the conditional use plan submitted on February 3, 2011, and in accordance with all findings of fact and not to any other uses or structures on the Property.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: 6/9/11

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.