

IN RE: <b>PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>		
N/S German Hill Road, 78' W of c/line of	*	ZONING COMMISSIONER
Ridgeshire Road		
<b>(7110 German Hill Road)</b>	*	FOR
12th Election District		
7th Council District	*	BALTIMORE COUNTY
Polish National Catholic Church of the	*	
Holy Cross, Inc., <i>Legal Owner</i>		
	*	
101 Development Group, LLC,		
<i>Contract Purchaser</i>	*	<b>Case No. 2010-0197-SPHXA</b>
Petitioner(s)	*	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception, and Variance filed by Richard A. Koory, general counsel, on behalf of the legal owner of the subject property, Polish National Catholic Church of the Holy Cross, Inc., and the Contract Purchaser, 101 Development Group, LLC (d/b/a Genesis Health Care), through its general counsel, Michael S. Sherman. As filed, Petitioners request zoning approvals as follows: Special hearing relief is requested to **(1)** amend the previous special exception approval for a 180 bed convalescent home granted in Case No. 80-77-X, **(2)** to permit business parking in a residential zone pursuant to Section 409.8.B of the Baltimore County Zoning Regulations (B.C.Z.R.), **(3)** to confirm residential transition area (R.T.A.) setbacks in B.C.Z.R. Sections 1B01.1.B.1.e (3) and (5) are not applicable to the proposal, **(4)** to confirm that the remainder of a property shown as parcel 91 exists as a legal non-conforming cemetery use; and, **(5)** to approve a property line adjustment as a non-density transfer. Petitioners also request special exception relief to approve a convalescent home pursuant to B.C.Z.R. Section 1B01.1.C.3. Finally, variance relief was requested, in the alternative, if deemed

necessary, to approve as little as a zero (0) foot setback and buffer in lieu of the required 50 foot buffer and 75 foot setback for parking lots. The subject property and requested relief are more fully described on the site plan, which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the relief requested were Natalie Holland on behalf of Petitioner Genesis Health Care, their attorney Sebastian A. Cross, Esquire, and James V. Hermann, the consultant and landscape architect who prepared the site plan. Appearing as interested persons were members of the church and several residents and/or business owners<sup>1</sup> in the area including Michael Morin, Orvil Pointer, Mary Williams, Cindy Morrison, Eugene L. Przybylowicz, III, and his father, Eugene L. Przybylowicz, and Melissa Sadowski, Business Development Representative, with the Department of Economic Development, who appeared and participated in support of the requested relief.

Testimony and evidence offered was that Genesis operates a nursing home known as "Heritage Center" at 7232 German Hill Road in Dundalk. The nursing home facility has been at this location since 1979, immediately after the original owner/operator obtained special exception relief to use the land as a 180 bed nursing home in Case No. 80-77-X. This approval was obtained by the previous operator, Meridian Health Care. Genesis purchased the facility in 1993 and has operated the nursing home since that date. The original Petition and copy of the Order granting the Special Exception are referenced on the site plan.

There are currently 180 beds at the existing facility and 175 total employees (full and part time, including three shifts), including caregivers and medical personnel, custodial employees, and administrative staff. Petitioner testified that it does not desire an increase of employees at this nursing home operation nor does Petitioner desire to add additional beds/patients. Due to the changing

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<sup>1</sup> Mary Williams and Cindy Morrison appeared on behalf of the 100-year old family owned Dundalk Florist that operates in close proximity at 7233 German Hill Road.

character of nursing homes since the inception of zoning regulations pertaining to them in 1988, additional parking is desired due to the higher level of care necessary for current residents and the increased volume of visitors, including family, clergy, etc. Testimony was presented that life expectancy has increased for residents, even those with debilitating illnesses. Current residents receive an enhanced level of treatment onsite, previously not available in the past, and today's nursing homes operate as "step down" hospitals. This results in additional service providers arriving onsite to conduct rehab therapy, hospice care, radiology, physical therapy, occupational therapy, etc. It is these additional care service providers onsite that results in a need for more parking. Due to the traffic congestion, employees and visitors are often forced to park on the residential streets nearby. In addition, Petitioner expressed concerns about having adequate space for ingress and egress of emergency vehicles responding to calls for service.

It is also to be noted that the parking regulations have changed since the original approval of this site as a nursing home in 1979. At that time, only one parking space for each 10 beds was required. Under current regulation, one space for each three beds is mandated. See B.C.Z.R. Section 409.6. This issue was discussed in People's Counsel's letter submitted in this case, which attached a copy of e-mail correspondence from Steve Weber, Traffic Engineering Bureau. Mr. Weber opined that the proposed lot would benefit the community as it would provide needed on site parking and eliminate parking in the adjacent residential neighborhood. Mr. Zimmerman assumed (incorrectly) that the proposed building expansion would add beds and require additional parking. As noted above, the building addition is to improve existing services and conditions and no new beds will be added. With the proposed parking lot, 98 spaces will be provided in total, more than required under law and sufficient under operational conditions.

In addition to this parking issue, Genesis also wants to update the building by adding a

potential building addition, as more particularly shown on the site plan. Currently this nursing home contains 3 beds per room, which is less than desirable for patients and staff. Genesis wants to change these rooms to only have 2 beds per room. The proposed expansion will allow space for the conversion from 3 beds to 2 beds while not increasing the overall total number of patients/beds.

In order to address these needs, Genesis approached the adjacent church and property owner about acquiring approximately two acres from the neighboring parcel for the additional parking lot and proposed expansion. The adjacent tract (shown as Parcel 91) is a 9.7 acre tract primarily zoned D.R.5.5. A small portion of Parcel 91 is used as a cemetery, in conjunction with other adjacent properties owned by the Polish National Catholic Church. This cemetery has been at this location for over a century. Through purchase, Genesis proposes acquiring two acres of parcel 91 (which are vacant) and adding this land with frontage on German Hill Road to its property to accommodate the proposed expansion.

The Special Exception relief is requested is to approve the nursing home use on this two acre parcel. The Special Hearing is to amend the special exception granted in 1979, in order to incorporate the newly acquired property for use as a parking lot and for expansion of the current nursing home's special exception use, to the extent that the subject property will add to the area previously approved in the original case. The remaining 7.7 acres of Parcel 91 will continue to be part of the cemetery and approval of this is requested as a nonconforming use. The area of disturbance is limited to the 2 acres that Genesis will acquire and no other changes to the existing cemetery are proposed. Petitioners' requested relief and a detailed description of the subject property are more fully illustrated on the site plan and layout of current and proposed improvements. *See Exhibits 1 and 4.*

In support of the request, Petitioner offered aerial photographs of the site and the surrounding area, which were marked and accepted into evidence as Petitioners' Exhibits 2 and 3. These

photographs show primarily residential use of properties in the area with small pockets of commercial use along German Hill Road. Testimony indicated the design of the proposed parking and building expansion, as depicted on the site plan, would be in keeping with the aesthetics of the neighborhood and the existing facility. The design of the parking lot will result in an additional 43 spaces, and the expansion will not overcrowd the property. The new parking area will correct an operational deficiency and the expansion will permit realignment of rooms while providing much needed common space and related therapy space.

As to the location of the proposed building expansion and parking lot, written comments from both People's Counsel's office and the Baltimore County Office of Planning suggest a preferable relocation of the new parking lot to an area further from German Hill Road. The comments suggest this would create a more desirable layout. Moreover, these comments suggest that the building expansion be adjusted. Testimony was received that neither of these conditions are workable and cannot be incorporated. First, as shown on the site plan and through evidence presented, the grade immediately behind the possible future two-story building expansion is quite steep and would not permit the desired building expansion at that location. Significant re-grading would be required as the building would be built into a hill. As the property serves as the residence for 180 individuals, the installation of windows is required and this would be difficult on the hill side of the property. In addition to the steep grades, which would require retaining walls and would disrupt the natural topography of the site, locating the building as suggested by Planning would also create an architectural conflict with the existing building. Specifically, the Petitioners' proposal is designed to connect a proposed building wing with the main hallway of the existing building. Petitioners' submitted as Exhibit 4 the existing building floor plan, which shows this proposed entryway connecting with the main corridor of the existing operation, including a nurse's station as well as

corridors to rooms, the lobby, dining room, etc. The placement of the expansion was stated as proper due to the entryway connecting logically with the current hallway layout of the existing operation.

Planning's comment states the proposed building could be redesigned; however, for the reasons previously outlined, this would not provide a feasible development either from a current operations standpoint or in light of the site constraints and grading requirements. Moreover, Planning's comment might require variances for building setbacks; which are not required under the current plan. Planning also requested that this proposed building should be designed as to not have a negative impact on the existing residential community. In this regard, Petitioner agreed to consult with the Office of Planning in developing an exterior building design that is in keeping not only with the existing residential character of its current operation, but also with the surrounding residential neighborhood. Petitioner also committed to working with the Office of Planning by indicating the parking area would be buffered by plantings and landscape design which would be reviewed and approved by the County's landscape architect and Office of Planning. Likewise, the proposed lighting plan would be also be subject to Planning review and approval.

Evidence was presented that the proposed development meets the criteria set forth in Section 502.1 of the B.C.Z.R., including the following: that the lot can be used without detrimental impact to the health, safety and general welfare of the locale; that it will not create congestion on the roads because it will take visitors and employees off the public streets in front of homes and businesses in the area, and will keep those persons from encroaching on private property. The proposed parking lot is compatible with the physical locale and neighborhood in that the subject property immediately abuts an existing nursing facility; and that the proposed use of the property is consistent with the zoning regulations and the previous approval granted through Case No. 80-77-X. Following Petitioners' case, neighbors offered testimony, stating they supported more parking in the area to

alleviate spillage of vehicles into the neighborhood. The neighbors supported the operation of the nursing home itself, but were concerned over any potential expansion of the nursing home facility. The Petitioners' description of the proposed operation (that no new patients are proposed but a realignment to allow two beds to a room rather than three) satisfied those neighbors in attendance. Moreover, any additional expansion of the scope of the operation would have to comply with all relevant zoning regulations and require another public hearing.

As to the special hearing for the proposed parking, I find that it satisfies the requirement of 409.8.B of the B.C.Z.R. This proposed parking lot will be used as a component of the nursing home, in that it will be used only by Genesis employees and visitors and not for the public's use or by any other businesses in the vicinity. I agree with Petitioner this proposed parking will actually improve the traffic conditions in and around the community generated by the nursing home and that the design and layout of the parking lot depicted on Petitioners' Exhibit 1 is compatible with the physical locale and the mixed residential and commercial uses in the neighborhood. The location of the proposed parking in a residential zone is appropriate.

Petitioner also requests relief from the residential transition area requirements. The Petition for Special Hearing requests that I confirm that RTA setbacks are not "applicable" to this proposal. That wording is not technically correct; as the Petitioner is actually requesting that I determine that the RTA, as shown on the plan, is appropriate, based upon certain recommendations that were submitted in open hearing. One of the purposes of the RTA is to assure that adequate buffers and screening are provided between dissimilar housing types. Section 1B01.1.B.1.e.5 of the B.C.Z.R. generally requires that parking lots as an accessory use provide 50 foot buffers and 75 foot setbacks. Due to the size and

configuration of the subject property, Petitioner desires a buffer and setback of 18 feet.<sup>2</sup> In the alternative to the special hearing, Petitioner asked for variance relief for these setbacks.

Addressing the request for special hearing, Petitioner observed that in certain circumstances, a variance from the RTA requirements *pursuant to the standard in Section 307.1* is not necessary for a reduction of the required residential transition area setbacks and buffers. Specifically, B.C.Z.R. Section 1B01.1.B.1.c(1) provides:

- (1) “Notwithstanding the provisions of Section 307, the hearing officer, upon the recommendation of Public Works, Planning, Environmental Protection and Resource Management, Permits and Development Management, Recreation and Parks, Community Development or the Economic Development Commission, may determine the amount of RTA in cases where a single tract of land is more than two acres, is vacant, or contains no more than one single-family detached, semidetached or duplex dwelling.”<sup>3</sup>

The subject property is more than 2.0 acres in size and, therefore, qualifies for approval pursuant to the above section.<sup>4</sup> Additionally, in this case, both the Director of Permits and Development Management and the Department of Economic Development submitted written recommendations to the undersigned, requesting that the proposed RTA buffers as shown on the plan be approved, without the need for a Section 307.1 based variance. Having considered Petitioners’ site plan and the locations for the building addition, new off-street parking spaces, and other related improvements shown thereon, I will, based upon the Directors of Permits and Development Management and Economic Development’s recommendations, approve the RTAs as shown on Petitioners’ Exhibit 1. This approval is made *pursuant to Section 1B01.1.B.1.c(1)*, therefore, the provisions of the Section 307.1 are not applicable, and, as a result, the portion of

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<sup>2</sup> There was certain discussion as to how the RTA setback/buffer is to be measured; i.e. from the property line of the Genesis site or the property line across the street at the closest neighbor’s lot. The discussion is academic, insofar as a determination of the RTA pursuant to B.C.Z.R. Section 1B01.1.B.1.c.

<sup>3</sup> This Section has been utilized to modify RTA requirements in the past. *See* (e.g.) Case No. 2009-0328-SPHA.

<sup>4</sup> The property actually meets all three criteria, in that it is vacant and does not contain any dwelling.

the Petition for Variance that requests RTA relief through Section 307.1 will be dismissed as moot.

Finally, testimony and evidence was presented that the cemetery has existed on the remainder of Parcel 91 since the early 1900s with exhibits being submitted showing gravestones with dates of 1906, 1921 and 1927. As such, this cemetery predated the zoning regulations in Baltimore County and shall be permitted to remain as a legally non-conforming use. It should be noted that the 2-acre parcel that is subject to the Petition has always remained vacant and does not have any gravestones or other attributes attributable to a cemetery. As such, this vacant portion of land will be approved for the relief requested and will be permitted to be incorporated into the adjoining parcel through a non-density transfer (lot line adjustment). This lot line adjustment will allow these two acres to adjoin the existing facility while not adding any additional density thereon. As such, the density for the remainder of Parcel 91 will stay intact with the legally nonconforming cemetery use.

For all of these reasons and after due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth above, I find that Petitioners' request for special hearing and special exception should be GRANTED, and the petition for variance will be dismissed as moot.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 14<sup>th</sup> day of April, 2010, that the Petition for Special Exception to approve a convalescent home, pursuant to Baltimore County Zoning Regulations (B.C.Z.R.) Section 1B01.1.c.3, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED, that the Petition for Special Hearing to amend the previous Special Exception for a 180 bed convalescent home granted through Case No. 80-77-X; to approve business parking in a residential zone; to permit residential transition area (RTA) setbacks as shown on the plan and as recommended by the Directors of the Office of Economic Development and Department of Permits and Development Management; to confirm that the remainder of Parcel 91 exists as a non-conforming cemetery use; and to approve a property lien adjustment as a non-density transfer, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner shall consult with the Office of Planning as indicated hereinabove to develop appropriate design and architectural elements for the proposed building expansion; as well as obtaining approvals for a landscape and lighting plan.

IT IS FURTHER ORDERED that Petition for Variance relief shall be DISMISSED as MOOT.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
of Baltimore County