

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF ZONING HEARING EXAMINER
RECONSIDERATION
SPECIAL EXCEPTION
4722
DECISION**

Application:	Alteration, Enlargement, Extension or Reconstruction of a Certified Non-Conforming Use (Apartments)
Applicant:	Lighthouse Holdings, Inc./Lighthouse at Twin Lakes Apartments
Opposition:	None
Hearing Dates:	January 10, 2013 and June 17, 2013
Hearing Examiner:	Maurene Epps Webb
Disposition:	Approval with Conditions

NATURE OF REQUEST

(1) Special Exception 4722 is a request to expand a Certified Non-Conforming Apartment/Multifamily garden style development by converting existing spaces into sixteen additional apartment dwellings, on approximately 32.89 acres of land in the R-18 (Multifamily Medium Density Residential) Zone. The subject property is located on the north side of Calverton Boulevard, west side of Beltsville Road and south of the Capital Beltway (I-95/495), and is identified as 11800 Beltsville Drive, Beltsville, Maryland.

(2) The Technical Staff recommended approval with conditions. (Exhibit 12) The Planning Board adopted the Staff's recommendation as its own. (Exhibit 18)

(3) No one appeared in opposition to the instant request at either of the hearings held by this Examiner.

(4) At the close of the initial hearing the record was left open to allow Applicant to submit photographs, a revised Letter of Exemption, and other items. (T. 46-47) The last of these items was received on April 10, 2013, and the record was closed at that time. I issued a decision wherein I approved the request with conditions. Immediately upon its receipt of the decision Applicant requested that I reconsider the matter, pursuant to Section 27-327 of the Zoning Ordinance, arguing that its witness misspoke when she testified that there are thirty-two (32) trash dumpsters on site. Finding sufficient good cause to reopen the record, I held an additional hearing on June 17, 2013. At the close of the record, Applicant asked for additional time to submit a revised Site Plan. The item was received on June 18, 2013 and the record was closed at that time.

FINDINGS OF FACT

(1) The subject property is an oddly-shaped parcel that is improved with twenty six (26) garden-style apartment buildings with a total of 700 units. (Exhibit 4; January 10, 2013 T. 5) The development was formerly known as Calverton Apartments, and was constructed in four phases between 1969 and 1973.¹ Since that time it has existed on one parcel under one ownership. (T. 19-20) County storm drain swales bisect the property and are surrounded by a 3 ½ foot high chain link fence. A board-on-board fence generally eight feet in height exists on the western portion of the site that is adjacent to the single-family dwelling units. The dumpsters on site are also screened by board-on-board fencing.

(2) The apartments are divided into four (4) sections. Prior Special Exceptions were approved to allow use of the apartments in excess of applicable bedroom unit percentages and/or to be in excess of the permitted density in the zone. (Exhibits 3 and 12)

(3) No additional buildings are proposed; all alterations will occur within existing apartment buildings. The subject property has and will retain 60% in green area. Accordingly, it is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance (formerly known as the Woodland Conservation and Tree Preservation Ordinance). (Exhibit 44) The property does not lie within the Chesapeake Bay Critical Area, nor within a floodplain. Staff noted that since no new grading or construction is proposed, the Site Plan “demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible.” (Exhibit 12, p.9)

Master Plan/Sectional Map Amendment/General Plan

(4) The subject property lies within an area discussed in the 2010 Subregion 1 Master Plan and Sectional Map Amendment (“SMA”). The Master Plan recommended medium-high density residential land uses for the site. The SMA retained the R-18 zoning of the site.

(5) The 2002 General Plan placed the property in the Developing Tier. As noted on page 36 of said Plan, “[t]he vision for the Developing Tier is to maintain a pattern of low-to moderate-density suburban residential communities, distinct commercial Centers, and employment areas that are increasingly transit serviceable.”

Neighborhood/Surrounding Uses

(6) The property is surrounded by the following uses:

- North – single-family residences in the R-80 Zone
- South – single –family residences in the R-T Zone

¹ The Technical Staff provided an excellent chronology of the zoning history of the property. (Exhibit 12)

- East – Calverton Elementary School in the R-80 Zone
- West – commercial property in the C-O Zone

(7) The Neighborhood's boundaries (established in a prior Special Exception application) are the north side of Calverton Boulevard and the west side of Beltsville Road. (Exhibit 12, p. 5; January 10, 2013 T.11)

Applicant's Request

(8) On February 28, 2011, Lighthouse Holdings LLC was issued Use and Occupancy Permit No. 19277-2010-00 for a nonconforming use (700 apartments). (Exhibit 4) Applicant has recently relocated its offices from one of the mid-rise apartment buildings into a large building attached to the pool area that was formerly used as a pool house. There are other areas within the apartment buildings that are no longer used as they were originally. As a result, Applicant would like to make some changes to the existing development, in three phases. As part of Phase I the former leasing office, located on the first floor of 11800 Twinlakes Drive in the mid-rise building, will be converted into three (3) studio or efficiency rental units. In Phase II Applicant would like to convert an area that formerly housed a dental practice, and a storage area adjacent thereto, into two (2) one-bedroom apartments. (Exhibit 47(a)) Applicant intends to complete Phases I and II within 18 months if the instant request is approved.

(9) In Phase III, Applicant would convert eleven former laundry rooms and their adjoining storage closets into eleven (11) efficiencies/ studio units. (Exhibit 47(a)) The laundry rooms are currently empty (since all units are now equipped with washers and dryers), and are located at 11910 Twinlakes Drive, 11914 Twinlakes Drive, 11916 Twinlakes Drive, 11920 Twinlakes Drive, 3903 Lakehouse Road, 3905 Lakehouse Road, 4003 Lakehouse Road, 4005 Lakehouse Road, 11936 Beltsville Drive, 3900 Calverton Boulevard, and 3906 Calverton Boulevard.

(10) Applicant indicated its willingness to comply with the conditions recommended by the Technical Staff. (January 10, 2013 T. 6) Applicant also submitted revised Site Plans that were meant to address all of the Staff's recommendations. (Exhibit 23 (a)-(f))

(11) Francis Silberholtz, accepted as an expert in the area of land use planning, testified on Applicant's behalf. He noted that all fencing shown on the Site Plan is existing, not proposed, and that no change is proposed to signage. He also provided a table indicating which units are being added to which buildings. (Exhibits 23(a) and 25) There are 983 existing parking spaces which include 41 existing handicap spaces. The instant Application would require a total of 1001 parking spaces, and 1,006 were initially proposed. The existing parking can accommodate Phases I and II (the conversion of the old office area and the dental office into five (5) new units) since that will only require 10 parking spaces.

(12) Applicant's witness noted at the first hearing that an additional 23 parking spaces will be constructed upon the removal of some of the 32 dumpsters on 13 dumpster "pads" that currently exist on site. (January 10, 2013 T. 18-22, 26-27) These dumpsters and pads were not shown on the Site Plan. Applicant originally proffered that it would

institute some type of valet service to pick up trash from each building, and/or an onsite trash compacting facility, thereby negating the need for all of the dumpsters. Upon further reflection, and subsequent to the hearing, Applicant determined that it will neither provide a trash compactor system nor a valet trash service. (Exhibit 43) It submitted a revised Site Plan that reduces the number of dumpster pad sites from thirteen (13) to eight (8). (Exhibit 47(e)). The exact number of dumpsters and their locations need to be shown on the Site Plan. Additionally, Applicant should, at a minimum, provide the same number of dumpsters that currently exist on site to ensure sufficient trash disposal service.

(13) Upon reconsideration of the matter a representative of the management company, Mr. Lee Siegal, testified that it was a mistake when the former witness stated that there are thirty-two (32) dumpsters on the site. He testified that there are several dumpster pads, as noted *supra*, with several dumpsters located on each, but there are only 17 dumpsters in total.

(14) Mr. Silberholtz opined that the use satisfied the applicable provisions of the Zoning Ordinance, reasoning as follows:

It will meet the standards providing for the health, safety and welfare of the citizens of Prince George's County....It's been used as a multi-family apartment complex....[W]e're talking about many decades now that it's existed as a good neighbor to the community. It's provided housing to the residents of Prince George's County – it's a convenient location. My opinion is that it complies with the Subregion I Master Plan which maintains – classifies – the property as a high-density residential area. The Zoning Ordinance calls this a – it's zoned R-18, it's medium density – R-18 zoning. It complies with the Master Plan which was the recently approved Subregion I Master Plan. My opinion is that it supports the standards for approval of Special Exception.

(January 10, 2013 T. 35-36) Mr. Silberholtz also provided written testimony in further support of his position. (Exhibit 27(a))

(15) People's Zoning Counsel requested that Applicant submit photographs of the laundry units being converted, and a draft floor plan for the units. Applicant submitted copies of photographs of all of the existing laundry rooms and the floor plan for the proposed converted units. (Exhibits 45 (a)-(f), and 46)

Agency Comment

(16) The Technical Staff recommended approval of the request, with a few technical conditions generally addressed above. In doing so, it provided the following reasoning:

The subject property has been used for multifamily residential purposes for many decades. This is an existing development and the alteration does not change the use which has been previously found to be in harmony with the purposes of [the Zoning Ordinance]. The applicant's proposed expansion of the use of the subject property for residential purposes is consistent with the land use recommendations within the Subregion I Master Plan and SMA, which maintained the medium high-residential land use for the subject property....

The proposed use is in conformance with all of the applicable requirements and regulations of [the Zoning Ordinance]. The alteration to allow the additional 14 studios or efficienc[ies] and 2-

bedroom dwelling units is within the allowable density in the R-18 Zone. The parking conversions and signage are in conformance with the regulations of [the Zoning Ordinance]....

A finding of adequacy for transportation facilities is not a requirement for special exception applications.... [Nonetheless] [t]he Transportation Planning Section has determined that the critical intersections will operate adequately in accordance with the "Guidelines for the Analysis of the Traffic Impact of Development Proposals" (Guidelines). Therefore, the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area.

(Exhibit 12, p. 8)

(17) The Transportation Planning Section also noted that the addition of 16 new apartment units should only add nine (9) additional A.M. and P.M. vehicular trips, and 104 additional daily trips. (Exhibit 12, pp. 43-44)

(18) The Staff further noted that police and fire and rescue facilities are adequate to serve the request, and that the Application "will have no effect on identified historic sites, resources, or districts." (Exhibit 12, p. 10)

LAW APPLICABLE

(1) The expansion of the certified nonconforming use at issue is permitted in the R-18 Zone in accordance with Sections 27-317 and 27-384 of the Zoning Ordinance.

(2) Section 27-317 provides as follows:

- (a) A Special Exception may be approved if:
 - (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
 - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
 - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
 - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
 - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
 - (6) The proposed site plan is in conformance with an approved Tree Conservation Plan; and
 - (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130 (b)(5).
- (b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:
 - (1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
 - (2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) Section 27-384 of the Zoning Ordinance provides as follows:

- (a) The alteration, enlargement, extension, or reconstruction of any nonconforming building or structure, or certified nonconforming use (except those certified nonconforming uses not involving buildings, those within the Chesapeake Bay Critical Area Overlay Zones as specified in paragraph 7, below, unless otherwise provided, and except for outdoor advertising signs), may be permitted subject to the following:

(1) A nonconforming building or structure, or a building or structure utilized in connection with a certified nonconforming use, may be enlarged in height or bulk, provided that the requirements of Part 11 are met with respect to the area of the enlargement.

(2) A certified nonconforming use may be extended throughout a building in which the use lawfully exists, or to the lot lines of the lot on which it is located, provided that:

(A) The lot is as it existed as a single lot under single ownership at the time the use became nonconforming; and

(B) The requirements of Part 11 are met with regard to the extended area.

(3) A certified nonconforming use may be reconstructed, provided that:

(A) The lot on which it is reconstructed is as it existed as a single lot under single ownership at the time the use became nonconforming;

(B) Either the nonconforming use is in continuous existence from the time the Special Exception application has been filed through final action on the application, or the building was destroyed by fire or other calamity more than one (1) calendar year prior to the filing date;

(C) The requirements of Part 11 are met with respect to the entire use; and

(D) The Special Exception shall terminate unless a building permit for the reconstruction is issued within one (1) calendar year from the date of Special Exception approval, construction in accordance with the building permit begins within six (6) months from the date of permit issuance (or lawful extension), and the construction proceeds to completion in a timely manner.

(4) When not otherwise allowed, a certified nonconforming use may be otherwise altered by the addition or relocation of improvements, such as fencing, landscaping, off-street parking and loading areas, and outdoor trash enclosures, or the relocation of buildings or other improvements within the boundary lines of the lot as it existed as a single lot under single ownership at the time the use became nonconforming.

(5) Any new, or any addition to, or alteration or relocation of an existing building or other improvement (which is either nonconforming or utilized in connection with a certified nonconforming use), shall conform to the building line, setback, yard, and height regulations of the zone in which the certified nonconforming use is located. The District Council may further restrict the location and bulk of the building or structure where the evidence so warrants. If the use is presently permitted by Special Exception in the zone, the new building, improvement, or addition shall conform to all of the physical requirements of the specific Special Exception use.

(6) The District Council may grant this Special Exception for property within a one hundred (100) year floodplain only after it has determined that the proposed enlargement, extension, reconstruction, or alteration will:

(A) Not require additional filling in the floodplain;

(B) Not result in an increase in elevation of the one hundred (100) year flood; and

(C) Conform with all other applicable requirements of this Subtitle and of Division 2 of Subtitle 4, "Building," of this Code, entitled "Construction or Changes in Floodplain Areas."

(7) In a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted where the existing lot coverage in the CBCA exceeds that allowed by Section 27-548.17, and which would result in a net increase in the existing lot coverage in the CBCA. In addition, a Special Exception shall not be granted which would result in converting a property which currently meets the lot coverage in the CBCA requirements of Section 27-548.17 to a nonconforming status regarding lot coverage in the CBCA, except if a finding of extenuating circumstances is made, such as the necessity to comply with other laws and regulations.

(b) Applications for this Special Exception shall be accompanied by a copy of the Use and Occupancy Permit for the certified nonconforming use, as provided for in Section 27-241(b).

(c) In a Chesapeake Bay Critical Area Overlay Zone, in order to permit the alteration, enlargement, extension, or reconstruction of any nonconforming building or structure or nonconforming use, the District Council shall find that:

(1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Overlay Zone provisions would result in unwarranted hardship;

(2) A literal interpretation of the County's Critical Area Program regulations would deprive the Applicant of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area Overlay Zones;

(3) The granting of a Special Exception would not confer upon an Applicant any special privilege that would be denied by this Subtitle to other lands or structures within the Chesapeake Bay Critical Area Overlay Zones;

(4) The request for a Special Exception is not based upon conditions or circumstances which are the result of actions by the Applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property;

(5) The granting of a Special Exception would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Chesapeake Bay Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the applicable laws within the Chesapeake Bay Critical Area; and

(6) The application for a Special Exception has been made in writing to the District Council or Zoning Hearing Examiner, if applicable, with a copy provided to the Chesapeake Bay Critical Area Commission.

(4) The request should also conform to the purposes of the R-18 Zone, found in Section 27-436(a) of the Zoning Ordinance:

(1) The purposes of the R-18 Zone are:

(A) To make available suitable sites for multifamily developments of low and moderate density and building bulk;

(B) To provide for this type of development at locations recommended in a Master Plan, or at other locations which are found suitable by the District Council;

(C) To provide for this type of development at locations in the immediate vicinity of the moderate-sized commercial centers of the County; and

(D) To permit the development of moderately tall multifamily buildings, provided they are surrounded by sufficient open space in order to prevent detrimental effects on the use or development of other properties in the general vicinity.

(5) The Court of Appeals provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect 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 no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

The record in this case reveals “no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan”. It would, therefore, be proper to grant the request, once the conditions addressed below are satisfied.

CONCLUSIONS OF LAW

(1) The provisions of Section 27-384 of the Zoning Ordinance are satisfied since:

- there is no request to enlarge any of the buildings in height or bulk;
- the lot is still a single lot under single ownership;

- the parking will be sufficient for the renovation of the first five units and the Site Plan shows where the additional parking will be added when the final eleven (11) units are developed;
- all changes are in conformance with the building line, setback, yard and height regulations of the R-18 Zone;
- the property does not lie within a one hundred year floodplain;
- the property does not lie within a Chesapeake Bay Critical Area Overlay Zone; and,
- Applicant submitted a copy of the Use and Occupancy permit for the certified nonconforming use.

(2) The general purposes of the Zoning Ordinance are listed in Section 27-102(a) and Special Exception 4722 is in harmony with the applicable purposes, for the following reasons:

- (1) *To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

Applicant is adding a few apartment units to an apartment community that has operated in the area for over forty (40) years; thus Applicant is addressing certain housing needs of the public, thereby promoting the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County.

- (2) *To implement the General Plan, Area Master Plans, and Functional Master Plans;*

The 2010 Subregion 1 Master Plan and Sectional Map Amendment supports a medium-high density residential land use for the subject property.

- (3) *To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;*

Staff noted that approval of the request will not adversely impact the transportation system or the public safety facilities. Thus this purpose is satisfied.

- (5) *To provide adequate light, air, and privacy;*

The Applicant's proposal is an expansion of an existing apartment community within the existing buildings and reconfiguration of existing parking and dumpster pad areas. Applicant does not require any variances to the setback or height restrictions of the Zoning Ordinance. Thus, this purpose is met.

- (6) *To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;*

Again, Applicant is minimally expanding an existing development. No adverse impact will result from the requested use of the subject property.

(7) *To protect the County from fire, flood, panic, and other dangers;*

The development will be in conformance with all County regulations, many of which are intended to protect the County from fire, flood, panic and other dangers. Accordingly, this purpose is met.

(9) *To encourage economic development activities that provide desirable employment and a broad, protected tax base;*

Continued use of the property is a positive economic development activity that provides employment and broadens the tax base.

(10) *To prevent the overcrowding of land;*

The Site Plan is in conformance with the setback and parking requirements of the Zoning Ordinance. The site is not overcrowded.

(11) *To lessen the danger and congestion of traffic on streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions*

The use is expected to attract nine additional A.M. and P.M. vehicular trips and 104 additional daily trips – a de minimis amount. The Application therefore meets this purpose.

(12) *To insure the social and economic stability of all parts of the County;*

By continuing the use that has successfully operated on site for many years and offering additional units for lease, Applicant is furthering the social and economic stability of Prince George's County. (Section 27-317(a)(1))

(3) The general purposes of the R-18 Zone are listed in Section 27-486 of the Zoning Ordinance and Special Exception 4722 is in harmony with these purposes since it is a multifamily residential development and such use (and the minimal alteration requested herein) is consistent with the land recommendations of the Subregion I Master Plan and SMA. The proposal will also continue to meet the 60% green space requirements for the R-18 Zone, thereby ensuring that the multifamily buildings are surrounded by sufficient open space to prevent any detrimental effects on other properties in the area.

(4) The proposed use and the Site Plan (as amended via the conditions) are in conformance with all of the applicable requirements and regulations of the Zoning Ordinance, once the recommended conditions are addressed. No variances, departures or waivers are required. (Section 27-317(a)(2))

(5) The proposed expansion of the apartments will not impair the integrity of the approved Master Plan since it recommends a medium- high density residential use for the subject property. (Section 27-317(a)(3))

(6) The proposed use of the subject property should not have any adverse impact on the health, safety and welfare of residents or workers in the area since no public facility will be adversely impacted by the addition of sixteen additional units. Moreover, no new construction will occur, nor will there be any reduction in green area. Thus, those residing or working in the area will probably be unaware of any change if the request is granted. (Section 27-317(a)(4))

(7) For the same reasons, the use will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))

(8) The internal changes to the subject property will not require any grading or exterior work; accordingly it is not subject to the Woodland and Wildlife Habitat Conservation Ordinance. (Section 27-317(a)(6))

(9) Again, no external development will occur; accordingly no disturbance to any regulated environmental features has been proposed. (Section 27-317(a)(7))

(10) The property does not lie within a Chesapeake Bay Critical Area. (Section 27-317(b))

DISPOSITION

Special Exception 4722 is APPROVED, subject to the following conditions:

1. Prior to the issuance of permits Applicant shall amend the Special Exception Site Plan by:
 - a. Outlining the boundaries thereof in red;
 - b. Labeling the materials and colors for the two freestanding sign details.
2. The revised Special Exception Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for review, approval and inclusion in the record, prior to the issuance of permits.

[Note: The Special Exception Site Plans are Exhibits 47(a)-(e). Refer to Schedule on Exhibit 25 for further detail as to the location of renovated apartment units.]