

Tax Map/Block/Parcel  
No. 59-22-1012

Building Permit/Zoning  
Certificate No. 05-2448

Case 5117

**OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND**

**APPLICANT:** Victory Springs, Inc.  
3251 Gamber Road  
Finksburg, MD 21048

**ATTORNEY:** John T. Maguire

**REQUEST:** A conditional use for an assisted living facility with a variance from the required 100 ft. side yard setback to 55 ft. on the western boundary and 74 ft. on the eastern boundary, or determination of MD Rte. 91 boundary as front yard; variance from the required 5 acres to 3.519 acres; and an appeal of the Zoning Administrator's determination that the proposed use is an "Other" use requiring variances as outlined above.

**LOCATION:** The site is located at 3141 Hughes Road, Finksburg, on property zoned "C" Conservation District in Election District 4.

**BASIS:** Code of Public Local Laws and Ordinances, Chapter 223-33 K, 223-37 and 223-186 A (1) (2) (3)

**HEARING HELD:** August 30 & October 25, 2005

**FINDINGS AND CONCLUSION**

On August 30 & October 25, 2005, the Board of Zoning Appeals (the Board) convened to hear a request for a conditional use for an assisted living facility with a variance from the required 100 ft. side yard setback to 55 ft. on the western boundary and 74 ft. on the eastern boundary, or determination of MD Rte. 91 boundary as front yard; variance from the required 5 acres to 3.519 acres; and an appeal of the Zoning Administrator's determination that the proposed use is an "Other" use requiring variances as outlined above. The Board made the following findings and conclusion:

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The Applicant is proposing to locate an assisted living facility at the intersection of Maryland Route 91 and Hughes Road in the Finksburg area. The project is 3.5 acres of "C" Conservation zoned land. The facility is proposed to be a two story brick building with 6500 square feet of floor area per floor. There would be 12-15 residents, each typically age 80 or above. There would also be a small staff on duty at all times to care for the residents.

The first question considered by the Board was whether the proposed assisted living facility constitutes a "dwelling" for the purposes of the lot area, width and yard requirements of the Conservation Zone set forth in Section 223-37 of the Zoning Ordinance. Under that section, dwellings require a minimum lot area of three (3) acres, whereas "other uses" in the zone require a minimum of five (5) acres. Dwelling is defined in Section 223-2 of the Zoning Ordinance as "any building arranged, designed or used in part for residential purposes ...". The definition then goes on to specifically exclude tents, cabins, trailers, mobile homes or "a room in a hotel or motel". Dwellings are also sub-categorized in the section as "single family, two family or multi-family". The term "assisted living facility" has a separate definition under this section. They are defined as facilities that "provide housing and supportive services, supervision, personalized assistance, health related services or a combination thereof ...". Furthermore, nursing homes, continuing care retirement communities and assisted living facilities are categorized as conditional uses in the Conservation Zone under Section 223-34.1 of the Ordinance whereas single family dwellings are principal permitted uses. We conclude that since the drafters of the Ordinance have specifically defined the term "assisted living facility", the specific definitional section should govern over the general one. Thus, although the definition of "dwelling" could theoretically be broad enough to encompass an assisted living facility (as well an apartment complex, dormitory nursing home, retirement community, etc.), the fact that there is a specific definition of "assisted living facility" should control in this case. We determine that an assisted living facility is not a dwelling for the purpose of Section 223-37, and we concur with the Zoning Administrator's conclusion in this regard.

Turning to the conditional use request, the Board heard testimony that a large 2 story structure with 6500 square feet per floor is being proposed to be placed on a 3.5 acre lot. There will be employees and a parking lot with 15 parking spaces. It is located adjacent to and across from residential developments and a wooded corridor. When we apply the criteria found in Section 223-191, we find that the proposed use at this large scale is inconsistent with and incompatible with the predominantly residential area in which it is to be located. The lot, while more than adequate for a single family dwelling in the Conservation Zone, is too small to accommodate this use and is not the most appropriate use of the land. In addition, we fail to see how this proposed use is consistent with the purpose of the Conservation Zone found in Section 223-31, which is to "conserve open spaces, water supply sources, woodland areas, wildlife and

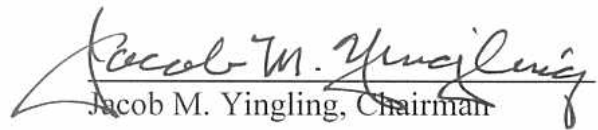
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other natural resources.” Thus, the location of the facility at this location would have adverse effects here above and beyond those normally associated with such a use. While an assisted living facility may be appropriate elsewhere in the zone, particularly on a larger, more buffered location, the placement of the facility here on this small lot is not appropriate. Accordingly, the request for a conditional use for an assisted living facility is denied.

11/16/05  
Date

  
Jacob M. Yingling, Chairman