

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
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IN THE MATTER OF: *
BRANDYWINE SENIOR LIVING *
AT POTOMAC, LLC * OZAH Case No. CU 16-01
*

Administrative Modification Before: Derek J. Baumgardner, Hearing Examiner

ORDER ADMINISTRATIVELY APPROVING A MINOR AMENDMENT TO
CONDITIONAL USE CU 16-01

I. BACKGROUND

On March 21, 2016, the Hearing Examiner approved the above conditional use for a residential care facility with up to 140 beds on property located at 10800 Potomac Tennis Lane, Potomac, Maryland, 20854, in the RE-2 Zone. The property consists of approximately 4.02 acres. The conditions of approval included the following:

1. The Applicant shall be bound by the testimony of its witnesses and the representations of its counsel identified in this Report and Decision.
2. The proposed use is limited to a 140-bed Residential Care Facility. Individual suites are not permitted to have full kitchens.
3. Physical improvements to the Subject Property are limited to those shown on the Conditional Use Site Plan filed on December 22, 2015 (Exhibit 131 (a)), and the related Landscaping and Lighting Plan.
4. This approval is limited to no more than 40 employees on Site at any one time.
5. The Applicant must obtain a permit from the Department of Permitting Services (DPS) for any proposed entrance sign, if required to do so by DPS upon permit application, and to file a copy of any such sign permit with OZAH. The final design of the entrance signs must be in compliance with the Zoning Ordinance.
6. Prior to the receiving use and occupancy certificates, the Applicant must meet all applicable Federal, State and County certificate, licensure, and regulatory requirements.
7. Prior to receiving use and occupancy certificates, the Applicant must apply, pursuant to the procedures in the Zoning Ordinance, for revocation of the current special exceptions on the subject site, as abandoned.

8. The Applicant must construct the terminus of Potomac Tennis Lane according to Montgomery County Department of Transportation (MCDOT) Road Code Standard MC223.01 – Temporary Turnaround, prior to the issuance of any building permit, as shown on the Conditional Use Plan. Any portion of the Temporary Turnaround that cannot be CU 16-01, Brandywine Senior Living Page 96 accommodated within the public right-of-way must be placed in a Public Improvement Easement (PIE).
9. The Applicant must provide a car service and shuttle service for residents as detailed in the Addendum to its Statement in Support of the Application (Exhibit 39(c)), and a shuttle service for employees to the local bus stop or to Metro.
10. The Applicant must provide and install ten covered and secured bicycle parking spaces in the structured parking facility as specified on the Conditional Use Plan.
11. The Applicant must satisfy the Adequate Public Facilities – Transportation Policy Area Review (TPAR) test by making a TPAR payment equal to 25% of the applicable development impact tax, to the Montgomery County Department of Permitting Services at the time of building permit.
12. The Applicant must receive approval of a Final Forest Conservation Plan by the Montgomery County Planning Board prior to any land disturbing activities.
13. Regular hours of operation for the facility are 24 hours a day, 7 days a week; however, regular deliveries are limited to Monday through Friday, 8:30 a.m. to 5:00 p.m., and Saturday, 9:00 a.m. to 5:00 p.m., except in emergencies, and trash pick-ups are limited to Monday through Friday, 9:00 a.m. to 5:00 p.m., and Saturday, 9:00 a.m. to 4:00 p.m. Delivery vehicles and trash trucks are prohibited from using the access alley and truck turn around between the hours of 5:00 p.m. - 9:00 a.m.
14. Prior to issuance of a building permit, the Applicant must obtain all required stormwater management approvals from Montgomery County. If those approvals require modification to the conditional use plan, the Applicant must apply for an amendment to the conditional use plan.
15. The Applicant must operate this facility in accordance with all applicable County noise regulations, and if found in violation any such regulation, it must immediately take appropriate steps to ensure future compliance.
16. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein.
17. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

II. The Amendment Request

On November 10, 2020, OZAH received a request from the Applicant, Brandywine Senior Living, LLC, to amend the approved conditional use to allow the construction of a lily pond in place of the previously shown lawn area within the northern courtyard, as depicted on the revised Conditional Use Plan and Landscape Plan. The stated purpose for this amendment is to “enhance the space to provide additional sound and visual interest for residents and visitors on the patio.” The Hearing Examiner referred the minor amendment to Staff of the Planning Department for their review. Staff stated that they had “no objection” to the proposed minor amendment. Exhibit 175.

The Applicant submitted a revised conditional use plan shown below on page 4 of this report. Exhibit 174.

III. The Governing Law

Requests to amend a conditional use are governed by §59.7.3.1.K of the Zoning Ordinance, which distinguishes between “minor” and “major” amendments. A “minor” amendment is one that “does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.” *Zoning Ordinance*, §59.7.3.1.K.a.2. A “major” amendment is one that “changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected when considered in combination with the underlying conditional use.” Major amendments must follow the same procedures as the original conditional use while minor amendments may be approved administratively by the Hearing Examiner. *Id.*

IV. Opinion and Decision

The revised conditional use plan submitted by the Applicant indicates the only change proposed is to replace a lawn or grass surface used for residents with a “lily pond.”

Given the nature of the proposed change and Planning Staff’s evaluation, one would not reasonably expect substantial adverse effects on the surrounding neighborhood from the proposed amendment. Further, upon review of the location of the proposed change with respect to the record in this case, the Hearing Examiner does not find any indication that this minor change would impact the proposed use or operation of the residential care facility or negatively impact the surrounding community given its location on the property out of view from neighboring properties.

Based on this record, the Hearing Examiner agrees with the Applicant and Planning Staff that the proposed amendment is minor because it does not change the nature, character, or intensity of the conditional use. The Hearing Examiner further finds that the minor amendment does not materially alter the proposed use or operation.



ORDER

Based on the foregoing, it is, this 11th day of February 2021:

ORDERED, that the request for a minor amendment to Conditional Use No. CU 16-01, allowing changes to the Conditional Use Plan and Landscape Plan as depicted in the revised plans is hereby administratively **APPROVED**; and it is further

ORDERED, that this amendment and the continued use of the conditional use are subject to all terms and conditions imposed in connection with the initial approval, except as specifically amended by the Hearing Examiner in this Opinion and Order. The Conditional Use holder is directed to comply fully with all applicable county, state and federal regulations; and, it is further

ORDERED, that pursuant to Section 59.7.3.1.K.2.b. of the Zoning Ordinance, any party may request a public hearing on the Hearing Examiner's action within 15 days after this decision is issued. **The request for public hearing must be in writing and must specify the reason for the request and the nature of the objection or relief desired.** If a request for a hearing is received, the Hearing Examiner must suspend his administrative amendment and conduct a public hearing to consider whether the amendment substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood. If the Hearing Examiner determines that such impacts are likely, then the amendment application must be treated as a major amendment application. A decision of the Hearing Examiner may be appealed on the basis of the Hearing Examiner's record to the Board of Appeals.



Derek J. Baumgardner
Hearing Examiner

NOTICES TO:

Elsabett Tesfaye, Planning Department
Michael Coveyou, Finance Department
Victor Salazar, Department of Permitting Services
Charles Frederick, Esq, Associate County Attorney
Erin Girard, Esquire
William J. Chen, Jr., Esquire
Brandywine Senior Living at Potomac, LLC, Applicant
Brenda Bacon
Curt Uhre, former President of the Brickyard Coalition
Ted Duncan, President of the Brickyard Coalition
Dr. Ronald A. Paul

Mrs. Toni Paul

Susanne Lee, President, West Montgomery
County Citizens Association (WMCCA)

Barbara Jay, Executive Director

Montgomery County Board of Appeals

All parties entitled to notice at the time of the original filing:

Abutting and Confronting Property Owners (or a condominium's council of unit
owners or renters, if applicable)

Civic, Renters' and Homeowners' Associations within a half mile of the site

Any Municipality within a half mile of the site

