

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. S-1424-A**

**PETITION OF KOREAN COMMUNITY SENIOR HOUSING CORPORATION OF  
MARYLAND, INC. AND KOREAN COMMUNITY SENIOR HOUSING  
CORPORATION OF MARYLAND, INC. II**

RESOLUTION TO CORRECT OPINION

(Resolution Adopted September 8, 2010)

(Effective Date of Resolution: September 16, 2010)

The Board of Appeals has received a letter, dated August 3, 2010, from Stephen J. Orens, Esquire. Mr. Orens requests clarification of the Board's June 16 action in rendering its opinion on this modification case, and, if appropriate, a revision to the Board's written Opinion, which was issued on June 29, 2010. Specifically, Mr. Orens states the recollection of the Petitioner's representatives that at its Worksession on June 16, 2010 the Board voted to delete Condition 12 proposed by the Hearing Examiner, which states:

"In addition to complying with the applicable County noise standards, construction of the proposed addition may not begin before 8:00 a.m. on weekdays and 9:00 a.m. on weekends, until the new structure is enclosed."

The Board of Appeals considered Mr. Orens' letter at its Worksession on September 8, 2010. The Board has reviewed the transcript of its discussion on June 16, 2010 and finds that it voted, on a motion by David K. Perdue, Vice-Chair, seconded by Stanley B. Boyd with Walter S. Booth and Carolyn J. Shawaker in agreement and Catherine G. Titus, Chair, opposed, to delete Condition 12. The majority of the Board found that in drafting the County noise ordinance, the County Council has weighed the competing policy considerations of how early construction activity should begin and the burden such activity potentially imposes on surrounding property owners, with the fact that a later starting time also imposes burdens on a landowner and the construction process. Having weighed those considerations, the County Council established a starting time of 7:00 a.m. in the County law. The Board majority further did not find anything in the instant application which distinguishes it from other construction projects and therefore

finds that the policy decision by the County Council should prevail. Therefore, by consensus of the Board:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that a corrected opinion in Case No. S-1424-A shall be issued as follows:

**Case No. S-1424-A**

**PETITION OF KOREAN COMMUNITY SENIOR HOUSING CORPORATION OF MARYLAND, INC. AND KOREAN COMMUNITY SENIOR HOUSING CORPORATION OF MARYLAND, INC. II**

CORRECTED OPINION OF THE BOARD

(Corrected Opinion Adopted September 8, 2010)

(Effective Date of Corrected Opinion: September 16, 2010)

Case No. S-1424-A is an application to modify an existing special, exception originally granted pursuant to Section 59-G-2.35 of the Zoning Ordinance, for senior housing. The Hearing Examiner for Montgomery County held a hearing on the application on March 5, 2010, closed the record in the case on April 16, 2010, and on June 4, 2010 issued a Report and Recommendation for approval of the modification.

Decision of the Board: Special Exception Modification **Granted**, Subject to the Conditions Enumerated Below.

The subject property is Lot P 11, Block 2, located at 440 East University Boulevard, Silver Spring, Maryland 20901, in the R-60 Zone.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation, together with a request for Oral Argument from Stephen J. Orens, Esquire and Casey L. Moore, Esquire at its Worksession on June 16, 2010. On June 22, 2010, the Board received a letter from Linda Holleran, President of the Buckingham Terrace Homeowner's Association (BTHA). Ms. Holleran's letter objects to the Applicant's request for Oral Argument and expresses BTHA's concerns about the hours of construction and the Hearing Examiner's consideration of the Applicant's Landscape and Lighting Plan. She requests additional conditions of approval or a remand to the Hearing Examiner.

Section 59-A-6.1(e) of the Montgomery County Code provides:

Within 10 days after transmittal of the Examiner's report any aggrieved party may file a written request for an opportunity to present oral argument before the County Council or Board, whichever has the authority to issue a decision on the matter under consideration. An aggrieved party includes any person or association appearing and participating in person, in writing, or by counsel at the hearing before the examiner, or any party who would be aggrieved by the decision. The request must explicitly state the matters desired to be presented at the oral argument and, if oral argument is granted, the argument must be limited to matters contained in the record compiled by the hearing examiner. The Council or Board, as appropriate, may in its discretion, grant or deny an oral argument request. Thereafter, the matter must be decided either as provided below, or remanded to the Examiner for clarification or the taking of additional evidence, if appropriate. Any decision of the Council or Board not appealed within the prescribed time is final.

Mr. Orens and Ms. Moore's request for Oral Argument asks the Board to revise proposed Condition 4 of the Hearing Examiner's Recommendation, and not to impose proposed Condition 12.

Proposed Condition No. 4 provides:

"Residence must be limited to senior adults and persons with disabilities of very low income, as defined by applicable regulations, and one resident staff member."

Mr. Orens and Ms. Moore request that the phrase 'of very low income' be deleted from the condition. They state the revision is needed to "(i) avoid limiting the income level requirements of the facility residents beyond that contemplated by Section 59-G-2.35(a) of the Montgomery County Zoning Ordinance, and (ii) to ensure the special exception holder the flexibility to comply with both the county income level requirements as set forth in Section 59-G-2.35(a) and the federal income level requirements established by the U.S. Department of Housing and Urban Development (HUD), which it must do in order to continue to qualify for funding which it receives from HUD.

Proposed Condition No. 12 provides:

"In addition to complying with the applicable County noise standards, construction of the proposed addition may not begin before 8:00 a.m. on weekdays and 9:00 a.m. on weekends, until the new structure is enclosed."

Mr. Orens and Ms. Moore state that proposed Condition 12 exceeds the restrictions found in Section 51B-6 of the Montgomery County Code which requires that construction creating up to 75 dBHs take place between the hours of 7 a.m. to 5 p.m. on weekdays. Further, they state that a requirement to

commence construction at 8 a.m. rather than 7 a.m. will prolong the construction process by approximately two weeks.

The Board finds that proposed Condition No. 4 should be modified in order to ensure compliance with both the applicable county and federal age restriction requirements. With respect to proposed Condition No. 12, the Board finds that in drafting the County noise ordinance, the County Council has weighed the competing policy considerations of how early construction activity should begin and the burden such activity potentially imposes on surrounding property owners, with the fact that a later starting time also imposes burdens on a landowner and the construction process. Having weighed those considerations, the County Council established a starting time of 7:00 a.m. in the County law. The Board cannot find anything in the instant application which distinguishes it from other construction projects and therefore finds that the policy decision by the County Council should prevail, and proposed Condition No. 12 should be deleted.

The Board finds that Ms. Holleran's letter, received June 22, 2010, does not meet the requirement of Section 59-A-6.1(e) that it be filed within ten days of the issuance of the Hearing Examiner's Report and Recommendation.

Therefore, based upon the foregoing, on a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Stanley B. Boyd, Walter S. Booth and Catherine G. Titus, Chair, in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the Board adopts the Hearing Examiner's Report and Recommendation in Case No. S-1424-A, Petition of Korean Community Senior Housing Corporation of Maryland, Inc. and Korean Community Senior Housing Corporation of Maryland Inc. II, with a revision to Condition 4, and the deletion of proposed Condition 12, and grants the special exception subject to the following conditions:

1. The Petitioners shall be bound by all of their testimony and exhibits of record, and by the testimony of their witnesses and representations of counsel identified in the Hearing Examiner's Report and Recommendation and in the Opinion of the Board.
2. All terms and conditions of the approved special exception remain in full force and effect, except as modified in the Board's order granting this modification request.
3. The addition proposed for this property is limited to 27 units for a total of 92 residential units in the entire facility. The proposed building and the site must comply with the final site, landscaping, lighting and other plans referenced herein.

4. Residence must be limited to senior adults and persons with disabilities, as defined by applicable regulations, and one resident staff member.
5. Petitioners must comply with the approved Preliminary Forest Conservation Plan and all applicable stormwater and sediment control regulations.
6. Petitioners must obtain a permit for its planned new sign, and must submit copies of the permit to the Board of Appeals prior to posting of the sign.
7. Petitioners must obtain and maintain all appropriate licensing from Montgomery County and the State of Maryland for continuing operation of an age-restricted, rental housing facility for independent seniors.
8. Petitioners must construct, staff and operate this senior housing facility in accordance with all federal, state and local requirements.
9. To clarify a reference in the resolution originally granting this special exception in 1987, the Board does not require this facility to run its own shuttle bus because, as discussed in the Hearing Examiner's report, the evidence demonstrates that adequate transportation services are available to the residents from other sources.
10. Subdivision is not required in this case, but there is an existing APF (Adequate Public Facilities) agreement with the Planning Board based on the existing 65 units. That APF agreement must either be modified or extinguished to allow for the additional 27 units.
11. Petitioners must comply with all applicable County noise standards. Garbage/dumpster pick-up shall also comply with time-of-day restrictions specified in Chapter 48 ("Solid Waste Regulations") of the County Code (*i.e.*, no pick-ups between 9:00 PM and 7:00 AM on any weekday, or 9:00 PM and 9:00 AM on Sundays and federal holidays).
12. Petitioners 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 special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception 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.

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Catherine G. Titus  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 16<sup>th</sup> day of September, 2010.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.