

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2873

PETITION OF VICTORY CROSSING

OPINION OF THE BOARD

(Opinion Adopted March 4, 2015
(Effective Date of Opinion: March 30, 2015)

Case No. S-2873 is an application for a special exception under Section 59-G-2.35 of the Zoning Ordinance (Mont. Co. Code, Chap. 59, 2004) to permit the construction and operation of housing and related facilities for senior adults and persons with disabilities. The Hearing Examiner for Montgomery County held a hearing on the application on October 17, 2014, closed the record in the case for the final time on January 12, 2015, and on February 11, 2015, issued a Report and Recommendation for approval of the special exception.

The subject property consists of approximately 2.51 acres, located in the northeast quadrant of the intersection of US Route 29 and New Hampshire Avenue, White Oak Subdivision, Silver Spring, Maryland 20904 in the R-90/TDR Zone.

Decision of the Board: Special Exception **Granted** subject to
the conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on March 4, 2015. After careful consideration and review of the record, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

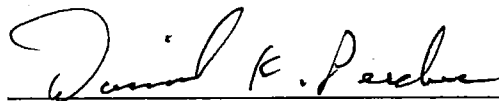
1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in this opinion;
2. The maximum allowable number of units must not exceed one-hundred and five (105) units (80 one-bedroom units and 25 two-bedroom units);

3. A maximum of four employees will be present on site at any one time and the hours of operation for staff will be from Sunday to Saturday, 8:30 a.m. to 5:00 p.m.;
4. Except in emergencies, 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., and trash pick-up is 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.;
5. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code; if changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must file a copy of the revised site and related plans with the Board of Appeals;
6. At Preliminary Plan, the Applicant must submit a traffic study for the entire site to satisfy Local Area Transportation Review (LATR) test;
7. The Applicant must coordinate the design plans with the Maryland State Highway Administration (SHA) regarding their Capital Transportation Program (CTP) Project M08875170, for a US 29, Columbia Pike Interchange at Stewart Lane;
8. The Applicant must provide one inverted-U bike rack for two bikes, or the equivalent, in front of the main entrance. The final location may be modified at Preliminary Plan review;
9. Prior to the issuance of building permits for affected units, the Applicant must provide the following to Staff: Certification from an engineer that specializes in acoustical treatment that the building shell will attenuate the projected exterior noise levels to an interior level not to exceed 45 dBA, Ldn, as identified in the noise analysis report dated October 25, 2013;
10. Prior to the issuance of Use and Occupancy Certificates, the Applicant must provide the following to Staff: Certification from the builder that the facility is constructed in accordance with recommendations of an engineer who specializes in acoustical treatment that the projected exterior noise levels will be maintained to an interior level not to exceed 45 dBA, Ldn, as identified in the noise analysis report dated October 25, 2013;
11. The proposed development must comply with the conditions of the Amended Preliminary Forest Conservation Plan, until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan;

12. Applicant must satisfy the requirements Section 59-G-2.35(a) as evidenced by a written agreement with the Department of Housing and Community Affairs prior to commencement of construction of the proposed senior housing facility;
13. Petitioner must obtain a permit for the proposed monument entrance sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform to all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board;
14. Petitioner 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. Petitioner 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.

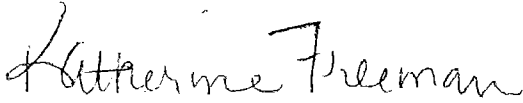
On a motion by Stanley B. Boyd, seconded by Edwin S. Rosado, with John H. Pentecost, Carolyn J. Shawaker, Vice-Chair, and David K. Perdue, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



David K. Perdue
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 30th day of March, 2015.



Katherine Freeman
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.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.