

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. S-2881

PETITION OF COLUMBIA/WEGMAN ACQUISITIONS, LLC

OPINION OF THE BOARD

(Worksession Date: September 16, 2015)
(Effective Date of Opinion: October 2, 2015)

Case No. S-2881 is an application for a special exception pursuant to §59-G-2.37 of the Zoning Ordinance, to build and operate an assisted living and memory care facility (a "domiciliary care home" in the Zoning Ordinance) with 113 units and 136 beds on a 5.977 acre parcel. The owner is United Christian Church. Petitioner is the contract purchaser, and Petitioner's agent is Lenity Architecture. The facility will be called Colesville Senior Living, and it is located in the R-200 Zone.

The subject property is Parcel 305, located at 13908 New Hampshire Avenue, Silver Spring, Maryland, 20904 in the R-200 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on July 10, 2015, closed the record in the case on August 14, 2015, and on August 28, 2015, issued a Report and Recommendation for approval of the special exception.

Decision of the Board: Special Exception Granted

The Board of Appeals considered the Report and Recommendation at its Worksession on September 16, 2015. After careful consideration and review of the record, the Board amended Condition No. 8 to substitute the word 'units' for the word 'lots', adopted the Report and Recommendation and granted 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 identified in the Hearing Examiner's Report and Recommendation and in this opinion.
2. The maximum allowable number of beds must not exceed one-hundred thirty-six (136).
3. Hours of operation are 24 hours per day, 7 days per week, 365 days a year, and the maximum number of employees on-site at any one time must not exceed twenty-four (24), except in emergencies.
4. The Petitioner must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9)(A), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. If changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must comply with those changes and file a copy of the revised site and related plans with the Board of Appeals.
5. The Petitioner must comply with the recommendations of the Intercounty Connector Limited Functional Master Plan Amendment by reconstructing the existing sidewalk along the New Hampshire Avenue frontage to be a 10-foot wide shared-use path with a green panel and street trees, unless the Planning Board approves an alternative sidewalk configuration at subdivision review.
6. The Petitioner must provide 4 bicycle parking spaces (*i.e.*, 2 inverted-U bike racks or the equivalent approved by Staff that conforms to American Pedestrian and Bicycle Professionals Guidelines). The Petitioner must install the bike racks in a weather protected area ideally in front of the main entrance.
7. The Petitioner must submit a traffic statement at Preliminary Plan review to satisfy Local Area Transportation Review (LATR) and any payments required by Transportation Policy Area Review (TPAR).
8. Prior to issuance of Use and Occupancy Certificates for affected units, the Petitioner must provide certification from the builder that noise-impacted **units** are constructed in accordance with recommendations of an engineer who specializes in acoustical treatment.
9. Petitioner must ensure that noise from its generators, air-conditioning and other equipment does not exceed County standards. Petitioner must comply with all applicable sections of the County Noise Ordinance (Chapter 31B of the County Code).
10. Garbage dumpster pick-ups must comply with time of day restrictions specified in Chapter 48-solid waste regulations - which specify that no pick-ups may occur

between 9:00 PM and 8:00 AM on any weekday, or between 9:00 PM and 9:00 AM on Sundays and federal holidays.

11. A sign permit must be obtained for the proposed 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 with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

12. The Petitioner must possess, not later than the issuance date of the use and occupancy certificate, valid State of Maryland and County licenses, certificates, and/or registrations that may be required for a domiciliary care home which provides assisted living to the elderly.

13. The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan (Exhibit 7(c)), 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.

14. Petitioner must maintain 71 parking spaces called for in its Special Exception Site Plan (Exhibit 43), and may not expand or reduce the parking facility without express permission from the Board through modification of this special exception.

15. 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.

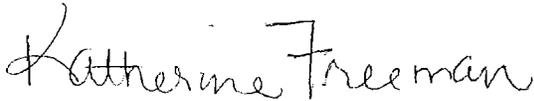
On a motion by David K. Perdue, Chair, seconded by Carolyn J. Shawaker, Vice-Chair, with Stanley B. Boyd, John H. Pentecost, and Edwin S. Rosado, in agreement, the Board adopted the following Resolution:

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

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 2nd day of October, 2015.



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.