

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. CU 15-05

PETITION OF ARTIS SENIOR LIVING

OPINION OF THE BOARD

(Worksession Date: April 13, 2016)

(Effective Date of Resolution: April 25, 2016)

Case No. CU 15-05 is an application for a conditional use to allow a residential care facility for more than 16 persons at 8301 River Road, in Bethesda, Maryland, pursuant to Section 59-3.3.2.E of the Zoning Ordinance. On September 8, 2015, the Hearing Examiner for Montgomery County issued a Report and Decision for approval of the conditional use, with conditions. The Board of Appeals received timely requests for oral argument on the Report and Decision from Carl S. Koenig, Anne E. Carlson, Catherine G. Titus and Jaime Manzano, as well as opposition to those requests from Erin E. Girard, Esquire, on behalf of Artis Senior Living. The Board heard oral argument on November 18, 2015, and in a Resolution dated December 2, 2015, remanded this matter to the Hearing Examiner for further fact finding regarding existing traffic safety along River Road near and approaching the subject property and at the intersection of River Road and Carderock Springs Drive, and the impact of the proposed use on traffic safety in those areas, including at off-peak hours, and for specific recommendations on possible measures to calm traffic and improve safety in that location, including, but not limited to turn lanes, speed limits, speed cameras or other speed recording devices and crosswalks.

In response to the Board's December 2, 2015, Resolution, the Hearing Examiner solicited additional information from Staff of the Montgomery County Planning Department and the Maryland State Highway Administration, and convened public hearing on February 11, 2016.¹ On March 16, 2016, the Hearing Examiner issued a Report and Recommendation finding, as had her earlier Report and Decision, that the proposed use can be granted with conditions, and further finding that (1) the proposed development will not cause undue harm to the neighborhood under Section 59-7.3.1.g of the Zoning Ordinance; (2) no mitigation measures are required for traffic generated by the proposed development; and (3) Condition No. 15 of the Hearing Examiner's Report and Decision dated September 8, 2015, pertaining to a one-year retention of jurisdiction over this use to monitor

¹ This hearing was originally scheduled for January 28, 2016, but was rescheduled due to weather.

traffic safety issues, should be removed and the remaining conditions renumbered accordingly.

The subject property is Lot 13, Block 2, Clewerwall Knolls Subdivision, 8301 River Road, Bethesda, Maryland, 20817 in the RE-2 Zone.

Decision of the Board: Oral argument **DENIED**;
Conditional Use **GRANTED**.

The Board considered the Hearing Examiner's Report and Recommendation, along with her earlier Report and Decision, at its April 13, 2016, Worksession. In addition, the Board considered new requests for oral argument from Betsy Brach, Catherine G. Titus, Carl S. Koenig, Eric E. Nothman, Anne E. Carlson and Margit Meissner, as well as opposition to those requests from Erin E. Girard, Esquire. The Board finds that the record compiled by the Hearing Examiner is thorough and exhaustive, and that the Report and Recommendation contains clear and detailed conditions of approval. The Board finds that no further argument is necessary for it to be able to render a decision on the application. The Board adopts the Hearing Examiner's September 8, 2015, Report and Decision, as supplemented and modified by the Hearing Examiner's March 16, 2016, Report and Recommendation, and grants the proposed conditional use, subject to the following conditions:

1. The Applicant shall be bound by all of his testimony and exhibits of record, and by the testimony of his witnesses and his representations identified in this report.
2. All development of the property must comply with the approved site plan (Exhibit 111(a)), Landscape Plan (Exhibit 37(c)) and Lighting Plan (Exhibit 37(d)).
3. The facility may operate 24 hours a day, 7 days a week, 365 days a year.
4. The number of employees on-site at any time may not exceed 18 and the total number of employees shall not exceed 38.
5. Employee shifts shall be 18 employees from 6:00 a.m. to 2:00 p.m., 12 employees from 2:00 p.m. to 10:00 p.m., and 6 employees from 10:00 p.m. to 6:00 a.m.
6. The Applicant must construct the bike path shown on the Conditional Use Site Plan (Exhibit 111(a)) prior to issuance of a Use and Occupancy Permit.
7. A five-foot wide pedestrian walking area must be striped on the east/north side of driveway from River Road to the entrance to the parking garage, as shown on the conditional use site plan (Exhibit 111(a)).
8. Any conveyance of a portion of the property to Montgomery County (to be part of Cabin John Stream Valley Park) must not affect any minimum setback or

other development standards required by Articles 3, 4, or 6 of the Zoning Ordinance.

9. The Applicant must construct a minimum 3-foot natural surface walking path/pedestrian refuge area at the location shown on the site plan prior to issuance of a use and occupancy permit.

10. The Applicant must post signs on both ends of the driveway warning drivers of the possibility that pedestrians may be using the driveway. The signs must meet standards set in the Manual on Uniform Traffic Control Devices.

11. The Applicant must upgrade the Ride-On bus stop pad site on River Road to be able to accommodate a bus shelter in the future.

12. The Applicant must install a call box with a weather-protected waiting area along the access drive approximately at the point where the park property and the SHA right-of-way meet. The Applicant must provide a shuttle service between the building and the call box. Shuttle service must be provided during visiting hours and when work shifts change.

13. The Applicant must install one bicycle parking rack ("inverted U" rack or similar) in the location as specified on the Conditional Use Site Plan (Exhibit 111(a)).

14. The Applicant must obtain a Permit for Construction on Parkland to widen the portion of the driveway within Cabin Branch Stream Valley Park.

15. No parking for the facility may occur on the shoulder of River Road along the property's frontage. The Applicant shall provide a shuttle service from an off-site location when visitor parking cannot be accommodated on the subject property; and

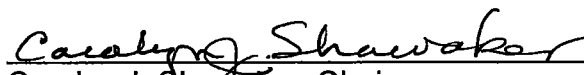
16. Prior to issuance of a building permit, the Applicant must obtain all required stormwater management approvals from Montgomery County. If those approvals require modification to the conditional use site plan, the Applicant must apply for an amendment to the site plan.

17. 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. 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.

On a motion by John H. Pentecost, Vice Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the requests for oral argument are **denied**; and

BE IT FURTHER 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.



Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of April, 2016.



Barbara Jay
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. 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.