

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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**Case No. CU 16-01**

**PETITION OF BRANDYWINE SENIOR LIVING AT POTOMAC, LLC**

OPINION OF THE BOARD

(Worksession Date: April 13, 2016)

(Effective Date of Resolution: April 26, 2016)

Case No. CU 16-01 is an application for a conditional use pursuant to Section 59-3.3.2.E.2.c of the Zoning Ordinance, to allow a residential care facility for more than 16 persons at 10800 Potomac Tennis Lane in Potomac, Maryland. On March 21, 2016, the Hearing Examiner for Montgomery County issued a Report and Decision for approval of the proposed conditional use, with conditions. The Board of Appeals received timely requests for oral argument on the Report and Decision from David W. Brown, Esquire, on behalf of the West Montgomery County Citizens Association and the Brickyard Coalition, from William J. Chen, Jr., Esquire, on behalf of Dr. and Mrs. Ronald A. Paul, and from Curtis Uhre, individually, as well as opposition to the requests for oral argument from Stephen Z. Kaufman, Esquire, and Erin E. Girard, Esquire, on behalf of Petitioner Brandywine Senior Living at Potomac, LLC, and a response to that opposition from Mr. Chen.

The subject property is Parcel A of the Potomac Tennis Club, located at 10800 Potomac Tennis Lane, Potomac, Maryland, 20854 in the RE-2 Zone.

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

Per Section 59-7.3.1.F.1.c of the Zoning Ordinance, a written request for oral argument transfers jurisdiction over this matter from the Hearing Examiner to the Board of Appeals. The Board considered the Hearing Examiner's Report and Decision at its April 13, 2016, Worksession, along with the requests for, and opposition to, oral argument. The Board finds that the record compiled by the Hearing Examiner is thorough

and exhaustive, and that the Hearing Examiner's Report and Decision 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 this application. The Board adopts the Hearing Examiner's Report and Decision, and grants the proposed conditional use, subject to the following conditions:

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 MC-223.01 – 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 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.

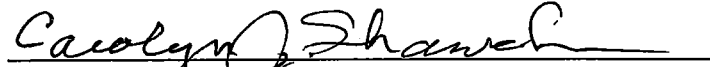
16. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure 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.

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**.

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 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. Shawyer, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 26th 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.