

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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(240) 777-6600

**CASE NO. S-2324 [A-4946]**

**PETITION OF GOPHER CERTIFICATES LLC  
AND HAGERSTOWN RECOVERY LLC**

**RESOLUTION TO REINSTATE RESOLUTION TO RE-OPEN THE RECORD  
AND MODIFY THE SPECIAL EXCEPTION**

(Resolution Adopted June 21, 2023)

(Effective Date of Resolution: July 12, 2023)

Case No. S-2324 was granted to Judith Sines on June 1, 1998, to permit a group home for twelve elderly residents pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance in effect at the time. In related Case No. A-4946, the Board granted a four-foot side lot line variance as well as a 10.3 foot variance for the width of the driveway. This special exception was transferred to Rafiq and Jagwati Inayat, effective June 24, 2004, and to Leah Berhane, effective September 24, 2019. Effective September 9, 2020, the special exception was transferred to Gopher Certificates LLC and Hagerstown Recovery LLC. In a Resolution effective October 2, 2020, the Board suspended this transfer following receipt of a timely request for a public hearing. Following a November 18, 2020, public hearing, on December 2, 2020, the Board issued a written Resolution reinstating the transfer. On February 5, 2021, the Board, among other things, reopened the record to receive an agreed-upon attachment prepared by the parties entitled "APPLICANT REPRESENTATIONS IN SUPPORT OF Board of Appeals' Resolution to Reinstatement Resolution to Re-Open the Record and to Transfer the Special Exception in Case No. S-2324 Adopted November 18, 2020 with an effective date of December 2, 2020." See Exhibits 36 and 36(a). On December 6, 2021, the Board reopened the record to receive the Use and Occupancy Certificate for this property, the Fire Code Compliance Permit, and a letter confirming installation of a camera surveillance system. Finally, effective March 8, 2023, the Board modified this special exception to increase the number of permitted beds from 12 to 16. In a Resolution effective April 28, 2023, the Board suspended this modification pursuant to a timely request for a public hearing on this

modification, pursuant to Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance (2004),<sup>1</sup> from Michele Rosenfeld, Esquire, on behalf of her clients Richard Miller, Linda Burrell, and Craig Berrington.

The Board held a public hearing on this matter on June 21, 2023. The purpose of this hearing was to determine whether the Board's March 8, 2023, modification of this special exception substantially changed the nature, character or intensity of the special exception use, or its effect on traffic or on the immediate neighborhood. Section 59-G-1.3(c)(1) of the Zoning Ordinance (2004) states that an administrative modification of a special exception can only be granted where proposed changes to the special exception terms or conditions can occur "without substantially changing the nature, character or intensity of the special exception use, and without substantially changing the effect on traffic or on the immediate neighborhood." James Peters, Esquire, appeared at the hearing on behalf of special exception holders Gopher Certificates LLC and Hagerstown Recovery LLC, in support of the modification. Mr. Peters called Kabir Singh, Brett Goldenberg, Scott Blumenfeld, and Jessica Eisenberg as witnesses. Michele Rosenfeld, Esquire, appeared on behalf of the opposition, and called Richard Miller, Sarah Grinder, Raymin Diaz, Joseph Travagline, John Patton, Asha Sitapara, and Craig Berrington as witnesses. In addition, community members Alia Fink and Nathan Phillips also testified in opposition to the modification.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

## EVIDENCE PRESENTED

1. The Board of Appeals received a Petition Requesting a Minor Modification of an Existing Special Exception ("Petition"), with attachments, from James Peters, Esquire, requesting that the number of beds permitted at this group home/residential care facility be increased from 12 to 16. The Petition indicates that 12 beds would be in the main house, and that four (4) would be in the "pool house." See Exhibit 40. Mr. Peters includes Fire Code Compliance Permits approving 12 residents at the main house and four (4) in the pool house with the Petition, along with the initial Use and Occupancy permit for the main house. See Exhibits 40(a)-(b).

Mr. Peters explains in the Petition that the successor to Section 59-G-2.26 of the Zoning Ordinance, under which this "Group Home" special exception was originally approved, is Section 59.3.2.2.E of the current Zoning Ordinance ("Residential Care Facility, 9-16 persons"). Thus he states that increasing the number of beds to 16 will not change the nature, character, or intensity of this use, stating that "[t]here is absolutely no difference in staff, traffic, character, nature or intensity between an eight, twelve or sixteen

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<sup>1</sup> Because Case No. S-2324 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance (2014), the transfer request underlying this hearing and future actions concerning this special exception are taken under the standards and procedures in effect on October 29, 2014, unless the applicant requests review under the current Zoning Ordinance.

bed facility,” and that “[t]his is going to be the same type of people, living in the same amount of space, doing nearly identical activities.” The Petition states that the use will remain a Residential Care Facility for 9–16 persons, and that it will not generate any additional traffic because no visitors are allowed, and because the residents are not allowed to leave the property or have a car on site. See Exhibit 40.

2. In her March 23, 2023, request for a public hearing, filed on behalf of her clients Richard Miller, Linda Burrell, and Craig Berrington, Ms. Rosenfeld asserted that her clients are “all adversely affected by the facility.” See Exhibit 43. Ms. Rosenfeld’s letter states that the grounds for a hearing include the following:

(1) Even with only 12 residents, the Applicant has already breached the Applicant Representations accepted by the Board into the record as operational terms binding on the Applicant including, but not limited to, repeated violations of its confirmation that residents would not leave the property;

(2) The Applicant’s current operations already create a nuisance in the community, increasing noise, commercial activity and traffic, adversely impacting neighbors’ right to quiet enjoyment of their homes, and any increase in the number of residents would exacerbate those adverse impacts;

(3) The Applicant bought at least two abutting properties in the neighborhood and has established them as adjunct treatment facilities, thus impermissibly operating a large commercial addiction treatment facility which has adversely eroded the residential character of the neighborhood, and has publicly announced its intentions to expand further into this residential community; and

(4) The existing facility at its current level of operation has materially depressed residential property values, and greater intensification of the use would exacerbate this adverse impact.

Ms. Rosenfeld asserts in her letter that the increase from 12 to 16 residents constitutes a major modification of this special exception under both the 2004 and the 2014 Zoning Ordinance, noting that the modification request seeks “an expansion of a special exception use that already operates far beyond its original grant of approval for 12 beds and has resulted in significant adverse impacts in the immediate neighborhood.” See Exhibit 43.

Ms. Rosenfeld’s letter states that the Petitioner “has expanded the current special exception use at 19120 Muncaster Road (a 3.7-acre property) to 5 Granby Court and 9 Granby Court with a combined acreage of approximately 8 acres.”<sup>2</sup> Her letter asserts that as confirmed by a posting on the Petitioner’s website, the Petitioner “operates the properties at 19120 Muncaster Road in conjunction with 9 Granby Court and 5 Granby Court as a single commercial addiction treatment campus” marketed as “The Valley.” Ms.

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<sup>2</sup> Ms. Rosenfeld notes in her letter that all three of the properties are “(i) served by septic; and (ii) are subject to the Upper Rock Creek Special Protection Area Overlay zone limitation of an 8% impervious cap due to the sensitive nature of the Rock Creek watershed.” See Exhibit 43.

Rosenfeld includes documentation with her letter which she asserts substantiates this claim. See Exhibit 43.

3. On June 15, 2023, the Board received an additional submission from Ms. Rosenfeld transmitting the following thirteen documents: (1) the transcript of BOA hearing on November 18, 2020 [Exhibit 51(a)]; (2) Case No. S-2434 Agreed-Upon Conditions and Transmittal Letter to BOA [Exhibit 51(b)]; (3) Muncaster Manor community map [Exhibit 51(c)]; (4) Granby Court Acquisitions [Exhibit 51(d)]; (5) February 13, 2023 letter to J. Peters re: Granby Court expansion [Exhibit 51(e)]; (6) October 21, 2021: The Valley's Press Release re expansion of campus [Exhibit 51(f)]; (7) October 24, 2022: The Valley's Press Release re: campus expansion to 28 beds [Exhibit 51(g)]; (8) The Valley website: June 7, 2023 [Exhibit 51(h)]; (9) The Valley footprint: March, 2023 [Exhibit 51(i)]; (10) The Valley footprint: May, 2023 [Exhibit 51(j)]; (11) Muncaster Manor Record Plat 12047 [Exhibit 51(k)]; (12) November 28, 2022 DPS findings [Exhibit 51(l)]; and (13) Treatment centers: Montgomery County and Maryland [Exhibit 51(m)].

4. On June 19, 2023, the Board received an additional submission from Mr. Peters, transmitting seven Exhibits relating to the following: (1) Exhibit A - Use and Occupancy Permit for the Main House [BOA Exhibit 53(a)]; (2) Exhibit B - Fire Permits for Main House and for Pool House approved for 16 Beds in total [BOA Exhibit 53(b)]; (3) Exhibit C - Approval from Montgomery County well and septic for 16 beds and proof of actual water usage, under 1200 gallons per day [BOA Exhibit 53(c)]; (4) Exhibit D - State license for 16 beds at 19120 Muncaster Rd, CARF International three-year accreditation report and Legit Script certification all for 19120 Muncaster Road [BOA Exhibit 53(d)]; (5) Exhibit E - Pictures of the Muncaster Property showing the pool house, the main house parking lot at 1 PM in the afternoon on Monday 6-19-2023 and the horse farm that is our rear neighbor [BOA Exhibit 53(e)]; (6) Exhibit F - All Granby Ct. information, Separate individual 8 bed state license for 9 Granby Ct, Separate individual 8 bed state license for 5 Granby Ct, separate individual fire permits for 5, 6 and 9 Granby Ct., Pictures of the entire cul-de-sac including the burned down lot at 10 Granby Court [Mr. Peters notes that Exhibit F is "[n]ot at all related to the special exception located at 19120 Muncaster Road but only included because the objectors raised the issue"] [BOA Exhibit 53(f)]; (7) Exhibit G - Google map print out of the entire area showing how far the objectors are from 19120 Muncaster Road [BOA Exhibit 53(g)]. See Exhibit 53(a)-(g). On June 20, 2023, Mr. Peters submitted a Legal Appendix. See Exhibit 54.

5. In addition to the submissions from counsel, the Board received written opposition to the requested modification from Tracy Branchaw, Bunthoeurn Mo, Diana Delmar, Marilynn Peifer, Alia Fink, and Kim Ulmer. See Exhibits 50, 52, 55, 56, 57, and 68.

6. The Chair opened the hearing by reminding the participants that the Board was sitting to consider whether the Board had properly granted an administrative modification to increase the number of beds permitted at this special exception group home/residential care facility from 12 to 16. The Chair noted that the special exception applies to a single piece of property (19120 Muncaster Road).

Ms. Rosenfeld stated that as a technical matter, the request was to increase the number of beds at the Muncaster Road property from 12 to 16, but that in fact, this use was operating as a greatly expanded special exception without Board authority, with operations that extend beyond the special exception property. Thus she asserted that the Board needs to consider the cumulative impact of the four additional residents on the operation's "campus," and the effects of this on the neighborhood. The Chair disagreed, and another Board member stated that those were issues for a different proceeding.

7. At the outset of the proceedings, Mr. Peters renewed his objection to the persons requesting this appeal having been found to have standing to do so, and stated that he wanted this issue preserved on the record for appeal.

Mr. Peters stated that this case is being considered under the 2004 Zoning Ordinance. He read the standard for an administrative modification into the record, and noted that Section 59-G-1.3(c)(4) of that Ordinance states that the public hearing must be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to discussion of those aspects of the special exception use that are directly related to those proposals.

Mr. Peters took issue with Ms. Rosenfeld's assertion that the additional four beds "can't be considered in a vacuum." He stated that the subject property is located in the RE-1 Zone, and that under the Zoning Ordinance, in the RE-1 Zone, a group home with up to 8 residents is a permitted use. Mr. Peters stated that under the Ordinance, a residential care facility can have between 9 and 16 residents.<sup>3</sup> Thus Mr. Peters stated that the Zoning Ordinance does not distinguish between a group home/residential care facility with 12 residents and one with 16 residents, and that this is a residential use in a residential community. Mr. Peters asserted that the previously granted administrative modification meets the standard for the grant of such a modification because it would have no effect on traffic. He stated that no one leaves the facility unless they are discharged or leave against medical advice, and that only staff come and go from the property, noting that parking at the Muncaster Road property is limited by the special exception. Mr. Peters states that there are other facilities in the community that are permitted by right, and that the traffic that the community is concerned about is on Granby Road and Granby Court where those by-right facilities are located.

Mr. Peters stated that he would have asked for 16 beds when he initially requested the transfer of this special exception if the County had correctly calculated water usage and the resultant number of beds allowed at the facility. He stated that this mistake has now been corrected, and the property has well and septic approval for 16 beds. See Exhibit 53(c). Mr. Peters stated that water meters installed on the property demonstrate compliance with the usage limits.

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<sup>3</sup> The Board notes that similar to the current Zoning Ordinance, under the 2004 Zoning Ordinance, a "Group home, large" (9-16 residents) required a special exception in the RE-1 Zone, while a "Group home, small" (3-8 residents) was a permitted use. See Sections 59-A-2.1, 59-C-1.31, and 59-G-2.26 of the 2004 Zoning Ordinance.

Mr. Peters stated that structures for this type of use that have more than eight beds require a Use and Occupancy Permit. He stated that a Use and Occupancy Permit was issued for the main building on the subject property, which has 12 beds. See Exhibit 53(a). He stated that the additional four (4) beds are located in the pool house on that property, which is a separate structure that has its own fire safety permits. See Exhibit 53(b). Mr. Peters stated that the State inspected the subject property, and has licensed it for 16 beds (12 in the primary structure and 4 in the secondary structure). See Exhibit 53(d).

Mr. Peters stated that Exhibit 53(e) is a photograph of the property's back yard that was taken at 2 p.m., and shows no one outside because all of the residents were in "group." He offered what he described as an "unsolicited" email from a former resident who stated they were helped by the special exception facility. See Exhibit 58. Mr. Peters stated that Exhibit 59 is a photograph taken the day before the hearing showing neighbors' children playing on the property, an assertion that was contested by neighbors who testified that the children were chasing a dog.<sup>4</sup>

Mr. Peters asserted that the opposition's case lacks evidence, and instead relies on conclusory statements. In response to a question from Ms. Rosenfeld regarding his ownership interest in the special exception, and asking if he was speaking as a witness or as an attorney, Mr. Peters explained that he owns approximately one-third of Gopher Certificates LLC and approximately one-third of Hagerstown Recovery LLC. He stated that he is the general counsel for matters concerning the property, and that they use a different firm for larger matters. Mr. Peters stated that he oversees the employees and acts as the managing member of the business. He said that everything he has stated will be brought out in testimony.

8. Mr. Singh testified that he is an owner/operator of Hagerstown Recovery LLC, and a part owner of Gopher Certificates LLC. Mr. Singh testified that he is a State-certified peer recovery specialist, and that he served on Montgomery County's Alcohol and Other Drug Advisory Council.

Mr. Singh testified that he has been at the Muncaster Road facility a couple times a week for the past two years, and that he has a good working knowledge of the facility's operations. Mr. Singh testified that the facility provides a 3.5 level of care, which he stated is high intensity residential care. He stated that residents spend 6 hours a day in treatment. Mr. Singh testified that he has never seen a resident leave the facility and come back. Mr. Singh testified that residents usually stay for 30 days, and that the facility has nurses and a psychiatrist. Mr. Singh testified the facility has security at night who make rounds, and a robust camera system. He testified that there is only one other facility in Montgomery County that provides this type of care (Avery Road). He stated that the Hagerstown facility provides this level of care but in a larger, 60-bed, dormitory-style facility. Mr. Singh testified that while the Hagerstown facility serves State Medicaid patients, the Muncaster Road facility takes a variety of insurance, including but not limited to private insurance, military, and Medicaid.

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<sup>4</sup> Mr. Diaz testified on direct that the picture at Exhibit 59 does not show his children playing, but rather shows them retrieving their dog.

Mr. Singh testified that there is plenty of room for the additional four beds in the pool house. He testified that this increase in the number of beds would require no additional staff, and that nothing else about the operation would change.

On cross-examination, Mr. Singh testified that income level does not change the level of resident care provided or resident behavior. He clarified that when he said that he had never seen a resident leave and come back, he meant that residents cannot walk away from the facility and return a few hours later. Mr. Singh testified that residents can leave by free will, but generally leave in a company or family vehicle, or in a cab/Lyft called by the facility. He testified in response to a question asking if he recalled testifying at a prior hearing that residents could not leave the Muncaster Road property, that at the time of that hearing, they only owned the Muncaster Road property. Mr. Singh testified that since that time, they have purchased additional properties, and that residents can go to the other properties, which are on Granby Court, if they are accompanied by staff. On re-direct, Mr. Singh testified that the properties are all connected, that there is a path in the back yard of the Muncaster Road property to get to the other properties, that all properties are leased by Hagerstown Recovery, and that he does not consider going to the Granby Court properties "leaving" the facility. Mr. Singh testified that residents at the Muncaster Road property can go do recreational activities at the other facilities after treatment, and that this is really all one facility with separate licenses. He testified that residents do not walk around the neighborhood unattended.

9. Mr. Goldenberg testified that he was the first person hired to work at the Muncaster Road facility, and that he has been doing similar work since 2007. He testified that he is the Executive Director at the Valley, and that he is there six to seven days a week, 10 to 12 hours per day. He testified that when he was hired, the conditions of the special exception were explained to him, and that he understood them. Mr. Goldenberg testified that residents at the Muncaster Road facility will walk through Valley properties to 5 Granby Court to see their counselor and for recreation/gym time. He testified that this is part of their treatment and is in compliance with the conditions of the special exception. Mr. Goldenberg testified that they have to provide these services for accreditation. He testified that the Muncaster Road residents do not go to the Granby Court properties unattended, that they do not go except as part of their treatment, that they do not go at night, and that they do not sleep there. Mr. Goldenberg testified that Exhibit 60 shows the weekly schedule for the staff and residents from 6 a.m. to 11 p.m.. He testified that the schedule creates structure and shows the staff and resident movement, and that it accurately represents what goes on at the Muncaster Road facility. Mr. Goldenberg testified that residents do not come and go, that people do not leave the facility for work, and that there are no visitors.

Mr. Goldenberg testified that no additional staff will be needed with the requested increase from 12 to 16 beds. He testified that residents usually come to the facility from hospitals, maybe two or three times a week. Mr. Goldenberg testified that after the administrative modification for the additional four beds was originally granted, and before it was suspended, the facility operated with 16 beds. He testified that during this time,

nothing changed in terms of traffic, staffing, or deliveries. Mr. Goldenberg testified that lunch and dinner at the Muncaster Road facility is catered, and is delivered once a day; he testified that breakfast food is delivered from Costco. Mr. Goldenberg testified that these deliveries would happen regardless of whether there were 12 or 16 residents at the facility. He testified that they have a laundry service that picks up on Wednesdays and returns the clean laundry on Thursdays, and that this would remain the same with the additional beds. Thus Mr. Goldenberg testified that there will be no changes in terms of people coming and going from the facility. He testified that there is more demand for their services than they have room for, and that the extra beds let them help four more people a month. Mr. Goldenberg testified that they currently have 12 beds at the Muncaster Road facility, and a total of 16 beds at the two Granby Court facilities (eight at each).

Mr. Goldenberg testified that they are a level 3.5 residential treatment facility, and explained that hospitals are level 4, and detox centers are level 3.7. He testified that people come to their facility after they are medically stable. Mr. Goldenberg testified that the next level down is 3.3, then 3.1, which would be a half-way house, and finally outpatient. He noted that they do not do outpatient treatment. Mr. Goldenberg testified that no one "comes and goes" from the facility, and that when people leave, the facility might arrange for their transportation (sometimes in groups of more than one person), or their parents might come get them. He testified that the average stay is 28 to 30 days, depending on the month and insurance. In response to a Board question, he testified that resident turnover is staggered. Mr. Goldenberg testified, based on his personal knowledge, that the increase from 12 beds to 16 beds at the Muncaster property caused no change to the intensity of the use or to traffic.

On cross-examination, in response to a question asking if current operations at the Muncaster property are consistent with Mr. Albaugh's November 18, 2020, testimony that residents would not leave that property, Mr. Goldenberg testified that they are not, but that residents are not roaming around, rather they are leaving that property for treatment purposes. In response to a question asking if posts had been installed to demarcate where residents could and could not go on the Muncaster property, as contemplated at the 2020 hearing, Mr. Goldenberg testified that there are no posts, but that there is an established perimeter where residents can and cannot go which essentially follows the property boundary. He testified in response to further questioning that sometimes residents at the Muncaster property go to 5 Granby Court for treatment, and that sometimes residents from Granby Court come to the Muncaster property for clinical services, noting that the Use and Occupancy Permit allows up to 40 people to be on site at the Muncaster property. See Exhibit 53(a). Mr. Goldenberg testified that there are currently six residents living at 5 Granby Court and six residents living at 9 Granby Court. He testified that they have a golf cart to move residents between their properties along a path that begins at the patio on the Muncaster property and runs to the driveway for 9 Granby Court, and then connects to the 5 Granby Court driveway. Finally, in response to a question asking if he was aware of a resident having walked off the property, Mr. Goldensohn testified that the person walked down Granby Court to Granby Road, that security brought him back, that he had refused his anti-psychotic medication, and that he was transferred to a facility that provided a higher level of care.

10. Mr. Blumenfeld testified that he is an attorney who has no interest in the Valley. He testified that he attended services at the abutting Son of David congregation several times, and that the congregation has a large, 60- to 80-space parking lot. Mr. Blumenfeld testified that he spoke to the congregation's Rabbi about purchasing the property, but the Rabbi would not sell. He testified that the Rabbi had nothing but good things to say about the Valley.

11. Ms. Eisenberg testified that she is the clinical director at the facility. She testified that she supervises staff and provides therapy. Ms. Eisenberg testified that she is aware of the facility's staffing needs, and that no additional staff is needed to increase the number of beds at the Muncaster property from 12 to 16. She further testified that this increase would cause no change in the treatment of residents, deliveries, or traffic. In response to a Board question asking what the interplay is between the Muncaster and Granby Court properties, Ms. Eisenberg testified that it is not significant. On cross-examination, she testified that occasionally residents from the Muncaster facility get treatment at 5 Granby Court, but that this does not happen every day and that it constitutes maybe a couple of people per week. Ms. Eisenberg testified that residents may also go to the Granby Court properties in groups for recreation, which she stated is therapeutic; she testified that she is not sure how often this happens. On redirect, Ms. Eisenberg testified that she is familiar with the schedule in the record at Exhibit 60, and that everything on that schedule is related to patient care.

12. Ms. Rosenfeld stated that pursuant to Section 59-G-1.3(c) of the 2004 Zoning Ordinance, in considering an administrative modification of a special exception, the Board is allowed to modify the special exception if it does not substantially change the nature, character, or intensity of the use, or its impact on traffic or the neighborhood. She asserted that pursuant to Section 59-G-1.3(c)(4) of that Ordinance, the Board is compelled to look more broadly at this case because the special exception holder in this case believes that the special exception extends to all of their properties, and that even if the Board only considered the Muncaster Road facility, it would could not grant this modification because the Muncaster Road facility is not in compliance with the grant of its special exception. Ms. Rosenfeld questioned how one could measure the effect of a change from 12 to 16 residents on the intensity of the special exception use and its effect on the neighborhood. She read from the general conditions for the grant of a special exception set forth in Section 59.G.1.21 of the 2004 Zoning Ordinance, and asserted that the Board needs to consider these factors. Ms. Rosenfeld stated that even an increase of four residents on the Muncaster property will affect the surrounding community because of the way that facility is operating. Finally, Ms. Rosenfeld disputed the contention that the Granby Court properties should not be considered in weighing this modification, and stated that the Board cannot consider the Muncaster Road facility in isolation because of the way it is functioning.

13. Mr. Miller testified that the corner of his property is 450 feet from the corner of the Muncaster property, and that he can see the Muncaster property and the properties at 5 and 9 Granby Court from his back door. He testified that he sees people travelling on a

daily basis between the Muncaster property and the properties at 5 and 9 Granby Court. Mr. Miller testified that the number of people can vary from one person to maybe 20 people at a time, and that they might be walking or might be in a golf cart.

Mr. Miller testified that he purchased his house in August, 2021, and that the area appeared residential. He testified that since that time, the Valley has expanded its operations to 5 and 9 Granby Court. Mr. Miller testified that this has negatively impacted his property's value, and has changed the character and nature of the community. He testified that three families have been displaced, and a fourth house burned down. Mr. Miller testified that he had met the former owner of 5 Granby Court, and that he has lost a sense of community. In response to a question asking if he had any interaction with the Valley residents, Mr. Miller testified that he did not. He testified that he sees people who appear to be in their 20s and 30s at the 5 Granby Court property in workout gear, and recounted a vulgar conversation that he overheard. He stated that conversation caused him to start researching the ownership of that property.

Mr. Miller testified that his pool is 75 feet from the back deck of the house at 5 Granby Road. See Exhibit 63. He testified that there are at least seven lights on at that house all night, and that this goes on at all of the Valley properties. See Exhibit 64. Mr. Miller testified that the photograph at Exhibit 65 was taken from the back of his property, and shows the Valley properties at 5 and 9 Granby Court, the 8-person golf cart that constantly goes back and forth, and cars parked at 5 Granby Court. He testified that in his view, the people who live at the Muncaster property are not adhering to the condition that they not leave the property, and that the moment they step onto the 9 Granby Court property, they are in default. Mr. Miller testified that it would be a mistake to consider the Muncaster property in a vacuum, and that adding four beds to that facility really adds 48 persons a year. In response to a Board question asking if he would still have a problem with this facility if the four additional beds were not approved, Mr. Miller testified that he would. He testified that he has witnessed visitors coming to 5 Granby Court, including one with a baby. Mr. Miller testified that the intensity of a group home for elder care is not the same as the intensity of a group home for rehabilitation because of the more frequent turnover in a rehabilitation facility.

On cross-examination, Mr. Miller testified that he was not aware that the Valley owned 9 Granby Court when he purchased his property. In response to a question asking what the difference in intensity was between a home with 8 residents and a family, Mr. Miller testified that he lacks a point of contact, and that the conversations taking place within earshot of his property are different. He testified that he had not complained to the Valley about the lights at night, that he was home about five times a day but not all day, and that he had not been to the Valley facilities. In response to a question asking how the residents of the Valley harmed his property value, Mr. Miller testified that he has suffered a loss of privacy and a loss of a sense of security, and that he does not know and cannot establish a relationship with the Valley residents. On redirect, he testified that you cannot build a rapport with neighbors who change every 30 days.

14. Ms. Grinder testified that she is a real estate agent. She testified that she and her husband live at 6 Granby Court with his children, and that they originally purchased that property in April 2021 to be close to her parents. She testified that at this time, she did not know that Mr. Peters was looking to expand his presence in the neighborhood. Ms. Grinder testified that they had planned to stay in their house when they initially bought it, but that they sold it to Hagerstown Recovery in April 2023, and are currently leasing it. She testified that with the sale of the property at 5 Granby Court and the fire at 10 Granby Court, the Valley now owns about 13 acres. Ms. Grinder testified that she approached Mr. Peters to investigate what was going on in the neighborhood, and acknowledged on cross-examination that she had asked if they were looking to expand their presence. She testified that she felt pressure from Mr. Peters to sell her property to the Valley, and produced an email from Mr. Peters stating that the presence of his operation in the neighborhood makes her property "worth less, not more." See Exhibit 66. She testified that as a real estate agent, she agreed with that statement. Ms. Grinder testified that Hagerstown Recovery offered her a nice price for her property, and that if she had sold it on the open market, she would not have recovered what she paid for it.

Ms. Grinder testified that 5 Granby Court looks right into her house, and that its lights are on all night, coming through the blinds on their house. In response to a question asking if having 12 residents at the Muncaster Road facility, six at 5 Granby Court, and six at 9 Granby Court adversely impacts her property, Ms. Grinder testified that it's not the number of people, but rather the 13-acre complex. She testified that the presence and growth of this facility affects the character of the neighborhood, and noted that they won't even let their children ride bikes around Granby Court because of the way that some Valley staff members drive. In response to a question on cross-examination asking what the residents of these homes do that affects her, Ms. Grinder testified that they affect traffic and comfortability. She testified that she sees cars stopping in front of her house and staring. Finally, Ms. Grinder testified that she has no interaction with the Valley residents.

15. Mr. Diaz testified that he is Ms. Grinder's husband, and that he lives at 6 Granby Court with her; he testified that his two children who are visiting for the summer also live there. He testified that they will be moving out soon. Mr. Diaz testified that when he and his wife first moved in, they met Ben and Victoria (i.e. the former owners of 5 Granby Court). He testified that the neighborhood dynamics had changed since that time, with different people coming in and out.

Mr. Diaz testified that at 6:50 a.m. on April 28, 2023, a male walked out of 5 Granby Court. He testified that a supervisor yelled for the male to come back, and that at 6:59 a.m., the supervisor returned by himself, without the person who had walked off. Mr. Diaz testified that he did not know what happened to that person. He testified that these are the types of incidents he is concerned about, and that there is a difference between having neighbors who live in the community and having transient neighbors.

Mr. Diaz testified that the addition of four beds at the Muncaster Road facility would negatively impact the neighborhood and property values. He testified that the change in the neighborhood started with the Muncaster Road facility and the unanticipated

expansion of that facility. He testified that the flood gates have now been opened, and that the use has now "snowballed" onto Granby Court. Mr. Diaz testified that the Board needs to recognize that this all began with the Muncaster property, and how it has ballooned.

On cross-examination, Mr. Diaz testified that while his property does not touch the Muncaster Road property, he can see what he thinks is the pool house from his front porch.

16. Mr. Travagline testified that he lives at 2 Granby Court, and that he purchased this property in March of 2021. He testified that he is familiar with the Valley, but that he was not aware of the Valley when he purchased his home, and would have felt differently about his purchase if he had been aware of the Valley's presence on/intentions for Granby Court. Mr. Travagline testified that his is a generational house, and that his daughter, son-in-law, and grandchildren live with him. He testified that it is his grandchildren, who are out and about, that he worries about. Mr. Travagline testified that the change to the neighborhood happened quickly, and that he had emailed Mr. Peters in April to see if Mr. Peters was interested in buying his house. He testified that Mr. Peters had just emailed him back last week. See Exhibit 67.

Mr. Travagline testified that he researched the community before purchasing his home. He testified that he knew the elder care facility was there when he purchased his property. Mr. Travagline testified that the Valley can try to keep tabs on the people it is serving, but that you cannot watch people 24 hours a day, seven days a week. In response to a question asking if he had noticed an increase in traffic, Mr. Travagline testified that there is a golf cart that moves back and forth on Granby, and that it seemed as though there was a little more traffic on Friday nights. In response to a question asking if he had concerns about the increase in beds from 12 to 16 at the Muncaster property, Mr. Travagline testified that his concern is that this facility has grown, and that there will be more traffic in the community no matter what. In response to a question asking if the Muncaster property affected his property value, he testified that all of the Valley properties affect his property value.

On cross-examination, Mr. Travagline testified that he cannot see the Muncaster Road facility from his house, that he does not have personal knowledge of what happens there, and that none of the residents from that facility have threatened him or his family. He testified that the property is well maintained, and that while you can tell it's some kind of facility because of the lights and generator, it does not bother him directly. In response to a question asking if the addition of four beds to the Muncaster property would affect traffic on Granby Road and Granby Court, Mr. Travagline testified that he didn't know, that it would depend on the release policy. He testified that he had not seen random people from the facility walking down the road recently, that he had never seen police at the facility, and that he purchased his home after the Muncaster Road facility was operational and after the Valley had purchased 9 Granby Court.

On re-direct, Mr. Travagline testified that he would not dispute the statement on Exhibit 66 that the presence of the Valley makes properties worth less, not more, and he testified that he would not move to the neighborhood now, especially with children.

17. Mr. Patton testified that he lives at 2 Granby Court and is Mr. Travagline's son-in-law. He testified that he and his wife have three children. Mr. Patton testified that he is familiar with the Valley, and with the Muncaster Road and Granby Court properties. He testified that it no longer feels like a neighborhood on Granby Court, that there is a loss of a sense of community, and that no one is sure what to do about it. Mr. Patton testified that four more beds means four more chances that something will happen. He testified that he agrees with Mr. Travagline's testimony and adopts it as his own.

Mr. Patton testified that he cannot see the Muncaster property from his house, but that he does see people walking back and forth. He testified that he does not know what cars are at the Muncaster Road facility, and that his issue is with the traffic on Granby.

18. Ms. Sitapara testified that she has lived in the neighborhood for 23 years, and can see the Muncaster Road pool house from her yard. She testified that she is familiar with the Valley, and with the Muncaster Road and Granby Court properties. Ms. Sitapara testified that there has been a change in the character of the facility, including an increase in traffic and an increase in the fear it generates. She testified that she worries about being abducted and about being hit by a car. Ms. Sitapara testified that living in fear affects her health. She testified that she does not know who the residents of the facility are or what they are being treated for. Ms. Sitapara testified that she does not walk in the neighborhood without protection. On cross-examination, she testified that she does not know if there has been an increase in traffic on Muncaster Road, but that there has been an increase on Granby. She testified that the Valley operates as one facility, and that if the Valley is permitted to continue to increase the number of beds at its Muncaster property, it will add danger to the community.

19. Mr. Berrington testified that he built his house in 1979 at the entrance to Granby Court. He testified that he is familiar with the settlement agreement/applicant representations that were agreed to in 2020 because he was involved in negotiating them. See Exhibit 51(b). Mr. Berrington testified that everyone on Granby Court and Granby Road is close to the Muncaster Road property, which he stated is deep and close to Granby Court. He testified that the Muncaster Road property is a 67 second walk from his house. Mr. Berrington testified that no one in the community was concerned about having an elder care facility on the Muncaster Road property, and that he was not concerned about having a rehabilitation facility there. He testified that what he is concerned about is Mr. Peters' plan to buy one house at a time and what that is doing to the neighborhood. He stated that Mr. Peters thinks he can do whatever he wants with those homes as long as they only have eight beds.

Mr. Berrington testified that the first thing Mr. Peters did after acquiring the Muncaster Road property was to try to acquire the Hatton property at 9 Granby Court, moving his operation directly into the community. He testified that Mr. Peters erected a

fence to block a public easement that provided access from Granby Court to a church. Mr. Berrington referred the Board to the list of properties on Granby Court that Mr. Peters has acquired since purchasing the Muncaster property. See Exhibit 51(d). He testified that this list is prima facie evidence of the change in the community, and that the burden is on Mr. Peters to prove by a preponderance of the evidence that the requested modification is not changing the community.

Mr. Berrington testified that the operations approved for the Muncaster Road property extend to the entire Valley campus. He stated that the facility has breached the terms of the settlement agreement/applicant representations, and that it is up to the Board to decide if violation of the settlement agreement is grounds to withhold approval of the requested modification, stating his belief that it would be wrong to approve the modification under these circumstances. Mr. Berrington stated that the settlement agreement has been breached because people leave the property every day prior to discharge. He further testified that the agreement has been breached because the facility is required to notify the police if a resident commits a crime; or poses a potential harm to him or herself, to others or to the community at large, and that the facility is required, annually, to submit a list to the Board of Appeals summarizing the dates of all calls to the police under these circumstances. He testified that the facility made no such filing the first year, and sent an email to the Board the second year which did not include a February 15, 2022, call to the police for an altercation at the Muncaster property. Mr. Berrington testified that there were over 40 calls to the police between January 2021 and June 2023.

Mr. Berrington testified that in June 2021, after the sale of 9 Granby Court, he went to the Muncaster Road property to ask what had happened. He testified that he was greeted by Mr. Goldenberg and Mrs. McAlpine, and was invited in to look around. Mr. Berrington testified that they had a long conversation in the back yard, during which the facility offered to build a fence between the Muncaster property and 9 Granby Court, and a pergola to screen smokers. They also talked about reducing noise. After the conversation, Mr. Berrington testified that Mr. Goldensohn emailed him to suggest that he work with Mr. Peters, lawyer to lawyer, and that Mr. Peters then emailed him, accused him of trespass, and stated that if it happened again, he would seek all available remedies under the law. He testified that this was the first of all kinds of threats indicating that one way or another, Mr. Peters intended to keep expanding in the neighborhood.

20. Mr. Phillips testified that he purchased his property in 2017, and that he lives there with his wife and children. He testified that the expansion from 12 to 16 residents increases the Valley's profits. Mr. Phillips testified that this is a 33% increase in the size of the facility, and that granting this request would increase corporate profits at the expense of the residential community. He stated that denying the modification request would send a message.

21. In his closing argument, Mr. Peters reminded the Board that residential care facilities with up to eight beds are permitted uses, and that facilities with between 9 and 16 residents (or more) require a conditional use. Thus he stated that under the law, he could buy every house in the neighborhood and turn it into an eight bed facility. Mr. Peters

argued that the only time you have to take the neighborhood into consideration is when you are seeking a new special exception/conditional use, not seeking to modify it.

Mr. Peters argued that the evidence before the Board indicates that nothing will change as a result of the requested increase of four beds at the Muncaster Road facility. He argued that all of the testimony has been about the Granby properties, which are permitted uses. Mr. Peters stated that the Muncaster Road facility has already received approval for this increase from well and septic, fire safety, and the State. He stated that there is no evidence that the added beds will increase the intensity of this use or its effect on traffic. He further stated that the additional beds will have no effect on the immediate neighborhood, which he stated is Muncaster Road. Thus Mr. Peters argued that the request meets the standard for the grant of an administrative modification, and he urged the Board to grant the requested modification.

22. In her closing argument, Ms. Rosenfeld argued that the special exception at issue in this case applies to a specific property, and that its boundaries are not fluid, as Mr. Peters has suggested by asserting that residents can go back and forth between the various Valley properties. She argued that the movement of residents residing at the Muncaster Road facility between that facility and the Granby Court facilities constitutes a violation of the settlement agreement, and should preclude expansion of the Muncaster Road facility.<sup>5</sup> Ms. Rosenfeld stated that the movement of residents between these properties has an adverse impact on the nature, character, and intensity of the special exception use, and an adverse impact on property values in the neighborhood. She stated that they have proven that the special exception holder will cause adverse effects on the neighborhood by showing that they are not in compliance with their existing approval.

## **FINDINGS OF THE BOARD**

Because Case No. S-2324 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the Petitioner elects otherwise. In the instant case, Mr. Peters indicated an intent to proceed under Section 59-G-1.3 of the 2004 Zoning Ordinance. Accordingly, Section 59-G-1.3(c)(1) of that Zoning Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

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<sup>5</sup> Mr. Peters stated that he was not prepared to discuss allegations that the terms of the settlement agreement were not being complied with at this hearing, and that the Board should not consider potential violations of the special exception at this hearing.

The Board finds, as it had in its March 8, 2023, Resolution, that the administrative modification satisfies this standard, and should be reinstated. The Board finds, as it had previously and as represented by Mr. Peters in his initial modification request, that any outward impact of the increase in the number of beds would be minimal because it will not change the underlying use, it will not necessitate an increase in staffing, and it will not cause an increase in traffic because the residents are not permitted to leave the premises during treatment, cannot have cars, and cannot have visitors. See Exhibits 40 and 42. Given that the staffing and other supports needed to operate this facility as a 16 bed facility are the same as that for a 12 bed facility, and that a facility for 12 persons is considered the same use as a facility for 16 persons under both the 2004 and the 2014 Zoning Ordinances, the Board finds that the requested modification will not increase the intensity of the use.

The Board further finds that the findings in its March 8, 2023, Resolution were corroborated at this hearing by the testimony of Mr. Singh, Mr. Goldenberg, and Ms. Eisenberg, all of whom, the Board finds, have firsthand knowledge of the operations at this facility. In support of its original findings, the Board cites the testimony of Mr. Singh that the increase in the number of beds would require no additional staff, and that nothing else about the facility's operations would change. In addition, the Board cites the testimony of Mr. Goldenberg, who testified that no additional staff would be needed to accommodate the additional beds, and that based on his personal experience operating this facility with 16 residents for a short period of time, nothing changed in terms of traffic, staffing, or deliveries during that time. This included the catering and laundry service, the frequency of which Mr. Goldenberg testified was the same regardless of the number of residents. Finally, the Board cites the testimony of Ms. Eisenberg that no additional staff was needed to increase the number of beds at the Muncaster property from 12 to 16, and that this increase would cause no change in the treatment of residents, deliveries, or traffic.

The Board also finds that there was no evidence to suggest that the addition of the requested beds would cause a substantial change to the nature or character of the underlying group home/residential care facility use, which would continue to be used as a level 3.5 residential treatment facility. The Board notes that while there was opposition testimony about traffic on Granby Road and Granby Court, there was no testimony that the addition of four beds to the Muncaster Road facility would have a substantial impact on traffic to and from that facility or on Muncaster Road. Further to this end, Mr. Goldenberg testified that resident arrivals and discharges are staggered. Given the consistent testimony that staffing requirements and deliveries would not change, the Board cannot find that the staggered arrival and discharge of four additional residents per month from the Muncaster Road facility would cause a substantial change in the impact of the use on traffic.

Finally, the Board notes that there was no evidence that the operations on the Muncaster property, as opposed to the Granby Road properties, adversely affect the neighbors. Accordingly, the Board cannot find that allowing four additional beds at the Muncaster property, which testimony indicates will require no additional staff or deliveries, and which the Board has found will not have a substantial impact on traffic as residents

stay for a month at a time and leave in staggered fashion, will cause a substantial change in the impact of the use on the neighborhood.

The Board recognizes the opposition testimony indicating that the presence of the Granby Road facilities has adversely impacted their neighborhood, and that residents of the Muncaster Road facility sometimes walk or travel by golf cart between that property and the Granby Court properties for treatment. While the number of Muncaster Road residents who receive treatment on Granby Court on any given day is not clear, what is clear, based on testimony of Mr. Goldenberg, is that these residents do not go to the Granby Court properties unattended, that they do not go except as part of their treatment, that they only traverse properties owned or controlled by the Valley in moving from one property to another, that they do not go at night, and that they do not sleep at the Granby Court properties. Putting aside the question of whether this movement is allowed under the special exception, which as noted below is not before the Board today, and acknowledging that there are already 24 residents (total) residing at the Valley facilities, including the special exception property on Muncaster Road and the other properties at 5 and 9 Granby Court, the Board cannot find that the addition of four residents at the Muncaster Road facility, who may on occasion (rightly or wrongly) travel across Valley properties to go to Granby Court for treatment, would cause a substantial change to the impact of this special exception use on the neighborhood.


Finally, to the extent that those opposed to this modification have argued that the modification should not or cannot be granted because the special exception is not being operated in compliance with all applicable terms and conditions, the Board notes that the compliance or noncompliance of this special exception with the terms of its grant is a determination initially made by the County's Department of Permitting Services ("DPS"), and was not properly before the Board today. As alluded to at the outset of this proceeding, there is a process outlined under Section 59-G-1.3 of the 2004 Zoning Ordinance for determining violations of special exceptions. That process involves the filing of a complaint alleging a violation with DPS or the Board, and an inspection of the special exception by DPS. If DPS finds that a violation exists, a Notice of Violation is typically issued, and the special exception holder is given a certain amount of time within which to cure the identified violation. If a reinspection by DPS reveals that the violation persists after the compliance date has passed, DPS may request that the Board set the matter in for a show cause hearing. This is the posture in which the Board could consider alleged or identified violations of a special exception, not during a public hearing on an administrative modification.

In light of the foregoing, on a motion by John H. Pentecost, Chair, seconded by Alan Sternstein, with Caryn Hines and Laura Seminario-Thornton in agreement, and with Richard Melnick, Vice Chair, necessarily absent:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2324 is re-opened to receive all Exhibits not previously entered into the record (Exhibits 50-68);

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the Board's March 8, 2023, Resolution to Re-Open the Record and Modify Special Exception, is hereby reinstated; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 12th day of July, 2023.

  
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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 Book. 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.

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

**Case No. S-2324 [A-4946]**

**PETITION OF GOPHER CERTIFICATES LLC  
AND HAGERSTOWN RECOVERY LLC**

**RESOLUTION TO SUSPEND MODIFICATION  
AND HOLD HEARING**

(Resolution Adopted April 19, 2023)  
(Effective Date of Resolution: April 28, 2023)

Case No. S-2324 was granted to Judith Sines on June 1, 1998, to permit a group home for twelve elderly residents pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance in effect at the time. In related Case No. A-4946, the Board granted a four-footside lot line variance as well as a 10.3 foot variance for the width of the driveway. This special exception was transferred to Rafiq and Jagwati Inayat, effective June 24, 2004, and to Leah Berhane, effective September 24, 2019. Effective September 9, 2020, the special exception was transferred to Gopher Certificates LLC and Hagerstown Recovery LLC. In a Resolution effective October 2, 2020, the Board suspended this transfer following receipt of a timely request for a public hearing. Following a November 18, 2020, public hearing, on December 2, 2020, the Board issued a written Resolution reinstating the transfer. On February 5, 2021, the Board, among other things, reopened the record to receive an agreed-upon attachment prepared by the parties entitled "APPLICANT REPRESENTATIONS IN SUPPORT OF Board of Appeals' Resolution to Reinstate Resolution to Re-Open the Record and to Transfer the Special Exception in Case No. S-2324 Adopted November 18, 2020 with an effective date of December 2, 2020." See Exhibits 36 and 36(a). On December 6, 2021, the Board reopened the record to the Use and Occupancy Certificate for this property, the Fire Code Compliance Permit, and a letter confirming installation of a camera surveillance system. Finally, on March 8, 2023, the record was re-opened to accept additional information, and the special exception was modified to increase the number of beds permitted at this group home/residential care facility from 12 to 16.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

The Board is in receipt of a letter with attachments dated March 23, 2023, from Michele Rosenfeld, Esquire, on behalf of her clients Richard Miller, Linda Burrell, and Craig Berrington, requesting a public hearing on the Board's March 8, 2023, Resolution to Reopen the Record and Modify Special Exception. On March 29, 2023, the Board received a Motion to Strike Request for Public Hearing from James Peters, Esquire, on behalf of his clients, Gopher Certificates LLC and Hagerstown Recovery LLC. Subsequent to that, on April 10, 2023, the Board received a filing from Ms. Rosenfeld entitled Opposition to Motion to Strike Request for Public Hearing; on April 11, 2023, the Board received a filing from Mr. Peters entitled Motion in Response to Opposition; and on April 14, 2023, the Board received a second filing from Ms. Rosenfeld entitled Opposition to Motion to Strike Request for Public Hearing, responding to Mr. Peters' Motion in Response to Opposition.

The Board of Appeals considered the afore-mentioned submissions at its April 19, 2023, Worksession. Ms. Rosenfeld was present in support of the request for a public hearing, and Mr. Peters was present in opposition to that request. At the Worksession, Mr. Peters argued that Ms. Rosenfeld's clients have no standing to request a public hearing under Section 59-G-1.3(c)(1) of the 2004 Zoning Ordinance, which reads as follows:

(c) **Modification.** The Board may amend or modify the terms or conditions of a special exception on request of the special exception holder or recommendation of the Department, or after a show cause hearing held under subsection (e).

(1) If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition. However, if the matter involves an accessory apartment, the Board must not act until 10 days after the posting of the property with a special exception for accessory apartment sign under Section 59-A-4.43. The sign must remain posted until at least 15 days after the mailing of the Board's resolution. The affirmative vote of at least 4 members of the Board is required to modify the terms or conditions.

A copy of the Board's resolution must be transmitted to the petitioner, the Planning Commission, the Department, the Department of Finance, all parties entitled to notice at the time of the original filing, and current adjoining and confronting property owners. The resolution must state that any party may, within 15 days after the Board's resolution is mailed, request a public hearing on the Board's action. The request must be in writing, and must specify the reasons for the request and the nature of the objections or relief desired. If a request for a hearing is received, the Board must suspend its decision and conduct a public hearing to consider the action taken.

Mr. Peters asserted at the Worksession that this Section defines a "party" to mean "the petitioner, the Planning Commission, the Department, the Department of Finance, all parties entitled to notice at the time of the original filing, and current adjoining and confronting property owners." He further asserted that "parties entitled to notice at the time of the original filing" refers only to those people (or entities) who were parties to the original grant of the underlying special exception. Thus Mr. Peters asserted that because Ms. Rosenfeld's clients are not abutting or confronting property owners, and because they were not parties to the 1998 grant of this special exception, that they are not "parties" to this matter, and have no standing to request a public hearing. Ms. Rosenfeld argued that all three of her clients live within sight<sup>1</sup> and sound of the subject property, and that two of them, Mr. Berrington and Ms. Burrell, were parties to the 2020 proceedings regarding this special exception use. She stated that her third client, Mr. Miller, owns property that is located 450 feet from the subject property. Ms. Rosenfeld argued that to read the public hearing provision as only applying to those persons who were entitled to notice when the special exception was originally granted is prejudicial, detrimental to the purpose of the public hearing provision, and contrary to Board practice. She asserted that her clients have standing under the law and pursuant to past practice.

After hearing from both sides and considering their written submissions, the Board indicated that the provision conveying the ability to request a public hearing on an administrative modification should be read broadly rather than narrowly in order to effect its presumed intent, and thus agreed with Ms. Rosenfeld that her clients, two of whom have already been parties to an administrative modification of this special exception, have standing to request a public hearing. As a result, the Board determined that a public hearing must be held, and the Board granted Ms. Rosenfeld's request for a public hearing and dismissed Mr. Peters' Motion to Strike Request for Public Hearing, along with his related Motion in Response to Opposition.

Because Case No. S-2324 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, Ms. Rosenfeld's request for a public hearing must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects to proceed under the current Zoning Ordinance. As noted above, Section 59-G-1.3(c)(1) of the 2004 Zoning Ordinance provides that when the Board of Appeals grants an administrative modification, "any party may, within 15 days after the Board's resolution is mailed, request a public hearing on the Board's action," and that "[i]f a request for a hearing is received, the Board must suspend its decision and conduct a public hearing to consider the action taken." The Board finds that Ms. Rosenfeld's March 23, 2023, request for a public hearing regarding the Board's March 8, 2023, Resolution is timely, and that a public hearing must be held.


Therefore, on a motion by John H. Pentecost, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Caryn Hines, and Laura Seminario-Thornton in agreement, the Board suspends its March 8, 2023, Resolution modifying this special exception, and will hold a public hearing to determine whether this modification

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<sup>1</sup> Mr. Peters disputed that Ms. Rosenfeld's clients live within sight of the subject property, stating that they do not have a line of sight to the property.

substantially changes the nature, character or intensity of the special exception use, or its effect on traffic or on the immediate neighborhood.

**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.

  
John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 28th day of April, 2023.

  
Barbara Jay  
Executive Director

**NOTE:**

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.

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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100 Maryland Avenue  
Rockville, Maryland 20850  
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**CASE NO. S-2324 [A-4946]**

**PETITION OF GOPHER CERTIFICATES LLC  
AND HAGERSTOWN RECOVERY LLC**

**RESOLUTION TO RE-OPEN THE RECORD AND MODIFY SPECIAL EXCEPTION**

**(Resolution Adopted February 22, 2023)  
(Effective Date of Resolution: March 8, 2023)**

Case No. S-2324 was granted to Judith Sines on June 1, 1998, to permit a group home for twelve elderly residents pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance in effect at the time. In related Case No. A-4946, the Board granted a four-footside lot line variance as well as a 10.3 foot variance for the width of the driveway. This special exception was transferred to Rafiq and Jagwati Inayat, effective June 24, 2004, and to Leah Berhane, effective September 24, 2019. Effective September 9, 2020, the special exception was transferred to Gopher Certificates LLC and Hagerstown Recovery LLC. In a Resolution effective October 2, 2020, the Board suspended this transfer following receipt of a timely request for a public hearing. Following a November 18, 2020, public hearing, on December 2, 2020, the Board issued a written Resolution reinstating the transfer. On February 5, 2021, the Board, among other things, reopened the record to receive an agreed-upon attachment prepared by the parties entitled "APPLICANT REPRESENTATIONS IN SUPPORT OF Board of Appeals' Resolution to Reinstate Resolution to Re-Open the Record and to Transfer the Special Exception in Case No. S-2324 Adopted November 18, 2020 with an effective date of December 2, 2020." See Exhibits 36 and 36(a). Finally, on December 6, 2021, the Board reopened the record to the Use and Occupancy Certificate for this property, the Fire Code Compliance Permit, and a letter confirming installation of a camera surveillance system.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

The Board of Appeals has received a letter with attachments from James Peters, Esquire, on behalf of the special exception holder. Mr. Peters requests that the number of beds permitted at this group home/residential care facility be increased from 12 to 16. His letter indicates that 12 beds would be in the main house, and that four (4) would be in the "pool house." He includes Fire Code Compliance Permits approving 12 residents

at the main house and four (4) in the pool house with his letter, along with the initial Use and Occupancy permit for the main house. Mr. Peters states in his letter that the successor to Section 59-G-2.26 of the Zoning Ordinance, under which this "Group Home" special exception was originally approved, is Section 59.3.2.2.E of the current Zoning Ordinance ("Residential Care Facility, 9-16 persons"). Thus he states that increasing the number of beds to 16 will not change the nature, character, or intensity of this use, stating that "[t]here is absolutely no difference in staff, traffic, character, nature or intensity between an eight, twelve or sixteen bed facility," and that "[t]his is going to be the same type of people, living in the same amount of space, doing nearly identical activities." Mr. Peters' letter states that the use will remain a Residential Care Facility for 9-16 persons, and that it will not generate any additional traffic because no visitors are allowed, and because the patients are not allowed to leave the property or have a car on site.

In addition, on February 21, 2023, Mr. Peters sent an email to the Board stating that during the past year, although the facility has had to call 911 a few times for medical transport, they have not to call the police for any criminal activity by clients. Mr. Peters included with his email, for the Board's records, a November 9, 2022, letter from Steve Usatin, President, The AV Team LLC, stating that the twenty (20) security cameras installed throughout the subject property have been inspected and are working properly.

The Board of Appeals considered the modification request and other correspondence at its Worksession on February 22, 2023. Mr. Peters appeared on behalf of the special exception holder, and Michele Rosenfeld, Esquire, appeared in opposition on behalf of Craig Berrington. Ms. Rosenfeld indicated that the list of abutting and confronting property owners submitted in connection with this modification request was not complete, and Mr. Peters indicated that he would submit a corrected list. Ms. Rosenfeld also took issue with the lack of notice of this proceeding to her client, but the Board noted that because this was a request for an administrative modification, no advance notice was required. Mr. Peters stated that but for a mistake by the County in their water flow calculations, pursuant to which occupancy at this facility was limited to 12 persons, he would have sought to have 16 beds at this facility from the outset. He stated that the County has since corrected this mistake.

Because Case No. S-2324 was approved prior to October 30, 2014, under Section 59.7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014. Section 59-G-1.3(c)(1) of the 2004 Zoning Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.


Based on the representations contained in Mr. Peters' letter requesting this administrative modification, the Board finds that the grant of this administrative modification, to increase the number of beds permitted at this facility from 12 to 16, will not substantially change the nature, character or intensity of this use, and will not

substantially change the impact of the use on the immediate neighborhood or on traffic. The Board accepts Mr. Peters' representations that the requested increase in the number of beds will not change the underlying use, will not necessitate an increase in staffing, and will not cause an increase in traffic because the patients are not permitted to leave the premises during treatment, cannot have cars, and cannot have visitors. Thus the Board finds that any outward impact of this increase in the number of beds would be minimal. Therefore, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Laura Seminario-Thornton, and Alan Sternstein in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that the record in Case No. S-2324 is re-opened to receive the afore-mentioned letter and email from Mr. Peters, with attachments; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that the request to modify the special exception, to allow a maximum of 16 beds, is granted; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.

  
John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 8th day of March, 2023.

  
Barbara Jay  
Executive Director

**NOTE:**

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections

and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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. 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.

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
[www.montgomerycountymd.gov/boa/](http://www.montgomerycountymd.gov/boa/)

(240) 777-6600

**CASE NO. S-2324 [A-4946]**

**PETITION OF GOPHER CERTIFICATES LLC  
AND HAGERSTOWN RECOVERY LLC**


**RESOLUTION TO RE-OPEN THE RECORD**  
(Resolution Adopted: November 17, 2021)  
(Effective Date of Resolution: December 6, 2021)

The Board of Appeals has received correspondence dated November 9, 2021, from James Peters, Esquire, submitting (1) the Use and Occupancy Certificate for this special exception property, (2) the Fire Code Compliance Permit, and (3) a letter dated July 15, 2021, from Steve Usatin, President, The AV Team, LLC, confirming installation of a camera surveillance system.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

Due to COVID-19, the Board of Appeals considered Mr. Peters's submission at a remote Worksession held on November 17, 2021, using Microsoft Teams. On a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, with Mary Gonzales, Richard Melnick, and Caryn Hines in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2324, Petition of the GOPHER CERTIFICATES LLC AND HAGERSTOWN RECOVERY LLC, is re-opened to receive James Peters's letter of November 9, 2021, with attachments.

  
John H. Pentecost

Chair, Montgomery County Board of Appeals

Entered In the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 6<sup>th</sup> day of December 2021.

  
Barbara Jay  
Executive Director

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. 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.

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**CASE NO. S-2324 [A-4946]**

**PETITION OF GOPHER CERTIFICATES LLC  
AND HAGERSTOWN RECOVERY LLC**

**RESOLUTION RE-OPEN THE RECORD AND  
DISMISS COMPLAINT**

(Resolution Adopted January 27, 2021)  
(Effective Date of Resolution: February 5, 2021)

Case No. S-2324 was granted to Judith Sines on June 1, 1998, to permit a group home for twelve elderly residents pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance in effect at the time. In related Case No. A-4946, the Board granted a four-foot side lot line variance as well as a 10.3 foot variance for the width of the driveway. This special exception was transferred to Rafiq and Jagwati Inayat, effective June 24, 2004, and to Leah Berhane, effective September 24, 2019. Effective September 9, 2020, the special exception was transferred to Gopher Certificates LLC and Hagerstown Recovery LLC. In a Resolution effective October 2, 2020, the Board suspended this transfer following receipt of a timely request for a public hearing. Following a November 18, 2020, public hearing, on December 2, 2020, the Board issued a written Resolution reinstating the transfer.

After the transfer was suspended, but before the public hearing pursuant to which it was reinstated, the Board of Appeals received a complaint from Michele Rosenfeld, Esquire, on behalf of her clients Patrick Hatton, Chad Bleggi, Craig Berrington, and Teresa Casafranca, alleging that the special exception had been abandoned. The Board also received a Motion to Dismiss the complaint from James Peters, Esquire, on behalf of his clients Gopher Certificates LLC and Hagerstown Recovery LLC. In a Resolution dated November 12, 2020, the Board re-opened the record to receive these documents, denied the Motion to Dismiss, referred the complaint to the Department of Permitting Services ("DPS") to investigate, asked DPS to provide the Board with a written report of its findings, and confirmed that the November 18, 2020, public hearing on the transfer would go forward as scheduled.

On December 10, 2020, the Board received a Memorandum with attachments pertaining to this matter from Barbara Cox, Permitting & Code Enforcement Inspector, DPS. See Exhibits 33 and 33(a). Ms. Cox states in her Memorandum that DPS has determined that the special exception has not been abandoned because there has not been a cessation of activity necessary to the operation of the special exception use for a period of at least six months' duration, such as would constitute abandonment under Section 59-G-1.3(d)(i) of the Montgomery County Zoning Ordinance (2004).<sup>1</sup> Ms. Cox's Memorandum sets forth a timeline of actions undertaken with respect to this special exception which evidence the continuation of the use. See Exhibit 33. She includes a 126-page attachment supporting the Department's findings with her Memorandum. See Exhibit 33(a). In light of the Department's finding that the special exception has not been abandoned, and the evidence summarized in and attached to that Memorandum, Ms. Cox's Memorandum states that DPS requests dismissal of the complaint.

On December 15, 2020, the Board received a letter from Ms. Rosenfeld taking issue with DPS' determination, and requesting that the Board either reject the DPS Memorandum and find that the special exception use has been abandoned, or remand the matter back to DPS for further fact finding. See Exhibit 34. At the request of Mr. Peters, and with the consent of Ms. Rosenfeld, consideration of this matter was postponed from the Board's December 16, 2020, Worksession to its January 13, 2021, Worksession.

On January 12, 2021, the Board received a joint request from Ms. Rosenfeld and Mr. Peters asking that consideration of this matter be deferred to January 27, 2021, while their clients worked to resolve their differences. See Exhibit 35. At its January 13, 2021, Worksession, based on this request, the Board continued the matter by consensus to its January 27, 2021, Worksession.

On January 26, 2021, the Board received a letter with attachment from Ms. Rosenfeld setting forth a joint request from Mr. Peters and from her, on behalf of their clients, asking that the Board re-open the record to receive Ms. Rosenfeld's letter and an agreed-upon attachment prepared by the parties entitled "APPLICANT REPRESENTATIONS IN SUPPORT OF Board of Appeals' Resolution to Reinstate Resolution to Re-Open the Record and to Transfer the Special Exception in Case No. S-2324 Adopted November 18, 2020 with an effective date of December 2, 2020." See Exhibits 36 and 36(a). Ms. Rosenfeld's letter stated that she would withdraw the complaint of abandonment if the requested documents were entered into the record.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

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<sup>1</sup> Because Case No. S-2324 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance (2014), this case continue to be considered under the standards and procedures in effect on October 29, 2014, unless the applicant requests review under the current Zoning Ordinance.

Due to COVID-19, the Board of Appeals considered Ms. Rosenfeld's January 26, 2021, letter with attachment at remote Worksession held on January 27, 2021. All participation was done using Microsoft Teams. Ms. Rosenfeld and Mr. Peters were present at the Worksession, where they asked that the Board accept into the record what they had agreed was a summary of representations made by the applicant (now the special exception holder) at the transfer hearing. Ms. Rosenfeld indicated that if the Board did this, her clients would withdraw their complaint of abandonment, eliminating the need for that process to go forward.

In light of the foregoing, on a motion by Bruce Goldensohn, Vice Chair, seconded by Katherine Freeman, with John H. Pentecost, Chair, Mary Gonzales, and Richard Melnick in agreement, as amended on a motion by Bruce Goldensohn, Vice Chair, seconded by Richard Melnick, with John H. Pentecost, Chair, Katherine Freeman, and Mary Gonzales in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2324 [A-4946] is re-opened to receive Ms. Rosenfeld's January 26, 2021, letter with attachment (Exhibits 36 and 36(a)); and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that, based on Ms. Rosenfeld's January 26, 2021, letter with attachment and the action taken by the Board, the complaint alleging abandonment of this use is dismissed as withdrawn.



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John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 5th day of February, 2021.



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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 Book. 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.

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**CASE NO. S-2324 [A-4946]**

**PETITION OF LEAH BERHANE  
[NEW HOLDERS: GOPHER CERTIFICATES LLC  
AND HAGERSTOWN RECOVERY LLC]**

**RESOLUTION TO REINSTATE RESOLUTION TO RE-OPEN THE RECORD  
AND TO TRANSFER THE SPECIAL EXCEPTION**  
(Resolution Adopted November 18, 2020)  
(Effective Date of Resolution: December 2, 2020)

Case No. S-2324 was granted to Judith Sines on June 1, 1998, to permit a group home for twelve elderly residents pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance in effect at the time. In related Case No. A-4946, the Board granted a four-footside lot line variance as well as a 10.3 foot variance for the width of the driveway. This special exception was transferred to Rafiq and Jagwati Inayat, effective June 24, 2004, and to Leah Berhane, effective September 24, 2019. Effective September 9, 2020, the special exception was transferred to Gopher Certificates LLC and Hagerstown Recovery LLC. In a Resolution effective October 2, 2020, the Board suspended this transfer following receipt of a timely request, pursuant to Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance (2004),<sup>1</sup> from Patrick Hatton, on behalf of himself and numerous other residents of the Granby, Artesian, and Muncaster Road Neighborhood, for a public hearing on the Board's September 9, 2020, Resolution to Reopen the Record and to Transfer the Special Exception.

Due to COVID-19, the Board held a remote public hearing on this matter on November 18, 2020. All participation was done via Microsoft Teams. The purpose of this hearing was to determine whether the Board's September 9, 2020, transfer of this special exception substantially changed the nature, character or intensity of the special exception

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<sup>1</sup> Because Case No. S-2324 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance (2014), the transfer request underlying this hearing and future actions concerning this special exception are taken under the standards and procedures in effect on October 29, 2014, unless the applicant requests review under the current Zoning Ordinance.

use, or its effect on traffic or on the immediate neighborhood. Rule 12.2 of the Board of Appeals Rules of Procedure [Resolution Numbers 12-865 (Adopted October 27, 1992), 14-742 (Adopted January 30, 2001) and 15-554 (Adopted March 23, 2004)] provides that the transfer of a special exception is a modification under Section 59-G-1.3 of the Zoning Ordinance (2004). Section 59-G-1.3(c)(1) of that Ordinance states that an administrative modification can only be granted where proposed changes to the special exception terms or conditions can occur "without substantially changing the nature, character or intensity of the special exception use, and without substantially changing the effect on traffic or on the immediate neighborhood." Patrick Hatton, who originally requested the public hearing, testified at the hearing in opposition to the transfer, and was represented by Michele Rosenfeld, Esquire. Ms. Rosenfeld also represented neighbors Craig Berrington, Teresa Casafranca, and Chad Bleggi; Sargent Bleggi also testified. In addition, two individuals who were not represented by Ms. Rosenfeld, Ramesh Rasanayagan and Bruce Wiley, testified to express their concerns. James Peters, Esquire, and Benjamin Kurtz, Esquire, appeared on behalf of Gopher Certificates LLC and Hagerstown Recovery LLC, in support of the transfer. Mr. Peters called Nicholas Albaugh and Kabir Singh as witnesses.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

## **EVIDENCE PRESENTED**

1. On August 11, 2020, the Board of Appeals received a Consent Petition Requesting Transfer of an Existing Special Exception ("Consent Petition"), with attachments, from James Peters, Esquire, indicating that Gopher Certificates LLC now owns the subject property and has leased it to Hagerstown Recovery LLC. See Exhibit 21. Mr. Peters requested in his Consent Petition, and in his Motion to Add Co-Petitioner/Holder, that the special exception be transferred to Gopher Certificates LLC and Hagerstown Recovery LLC as co-holders. See Exhibits 21 and 21(a). He states in his Consent Petition that the special exception use is not changing, as follows:

As the Board knows, the County Zoning Code Section 59-3.3.2.E.b for Residential Care Facilities 9-16 beds, defines both group homes for the elderly and residential substance abuse programs as Residential Care Facilities and thus they are identical uses under the current Code. Due to the fact, that my client does not wish to increase the number of beds permitted at this location, under County Zoning Code, the use is going to remain a Residential Care Facility 9-16 beds and is not changing at all.

With respect to beds, Mr. Peters notes in his Consent Petition that at present, "twelve (12) disabled individuals are living on site being treated by trained medical staff," and that this will not change. His Consent Petition states that residents of the Hagerstown Recovery facility will not have cars and will not be allowed to leave the facility or have visitors, and that staffing will be lower than for the current operator, thus reducing the effect of traffic on the immediate neighborhood. Mr. Peters' Consent Petition thus asserts that the requested transfer will not change the nature, character, or intensity of the use, or its effect on traffic or the immediate neighborhood. It concludes that "[s]ince, as stated

above, under Section 59-3.3.2.E.b for Residential Care Facilities 9-16 beds of the County Code, the actual character of this use is not changing at all, the law protects both facilities equally, the proposed facility and the existing facility. As such, since both facilities are the same in impact, one facility cannot be permitted, while the other is not." Mr. Peters includes written consent to the transfer from current special exception holder, Leah Berhane, as well as a copy of the Deed evidencing ownership of the subject property by Gopher Certificates LLC, and a copy of the lease between Gopher Certificates LLC and Hagerstown Recovery LLC. See Exhibit 21.

2. In their September 21, 2020, request for a public hearing, Mr. Hatton and the other signatories to his letter expressed their opposition to the transfer, and noted that the facility will no longer be used for "elder care," but rather will be used "for persons with severe alcohol or drug abuse issues." See Exhibit 23. The letter states that their concerns are based on a different facility—not associated with Gopher Certificates LLC or Hagerstown Recovery LLC—that is currently located in their neighborhood, which they state has "dramatically changed [their] community environment," "raised risks for young children," and "present[s] a continuing threat of property trespass or burglary."<sup>2</sup> The letter requests a public hearing to address the following five issues:

A. The neighbors request an opportunity to share their experience with the existing facility, and why this demonstrates that Mr. Peters' assertions that the proposed transfer will likely generate less traffic and will not change the nature, character, or intensity of the use are incorrect.

B. The neighbors request an opportunity to present evidence that they assert refutes the Board's conclusion that the transfer of this special exception will not change the nature, character, or intensity of the use, or substantially change its impact on the immediate neighborhood or on traffic.

C. The neighbors assert that the neighborhood's "poor access to public utilities, inadequate road infrastructure and limited public transportation" cannot support the traffic that will be generated by the operation of a substance abuse facility.

D. The neighbors state that they have received very little information to date about the operation of the new facility, and request that this be addressed in a hearing.

E. The neighbors state that they are already experiencing an "unacceptable level of risk" from the other facility in their neighborhood, and state that while they welcome the elder care facilities currently operating in their neighborhood, they oppose the "renewal of the special exception and the repurposing of the residential property from an elderly care facility to a drug and/or alcohol rehabilitation facility."

3. In his Opening Statement, Mr. Peters stated that his clients plan to operate a residential substance abuse program on the special exception property that is focused on the treatment of alcoholics and opioid abusers who have already completed a detoxification process. He stated that residents of the facility will not be permitted to leave

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<sup>2</sup> The existing facility which gives rise to Mr. Hatton's concerns is generally referred to in this Resolution as the "other" facility or the "other existing" facility, and is accredited to operate a crisis stabilization program. See Exhibit 30(f).

the premises for the duration of the program, and will not be allowed to have visitors, in order to avoid any "triggers." Mr. Peters stated that residents will not have cars and will not have jobs to go to. He explained that residents will be required to sign a contract which states that if they leave the premises prior to the end of their scheduled stay, they will not be permitted to return and will forfeit all monies paid.

Mr. Peters called the Board's attention to the original 1998 Board Opinion granting this special exception, and stated that his clients agree to adhere to the terms and conditions set forth in that Opinion. He stated that in that Opinion, the Board found that the building and septic system could accommodate 12 residents, and that no traffic study was needed due to the number of peak hour trips. See Exhibit 30(a).

Mr. Peters noted that his clients could operate a group home for eight (8) persons at the subject property as a matter of right, and that no additional employees would be needed at the facility if it were to have 12 residents instead of eight (8).

Finally, anticipating a line of argument from persons opposing the transfer, Mr. Peters stated that the facility his clients are seeking to open is not related to the other facility already operating in this neighborhood, stating that that facility is a crisis facility for persons experiencing acute mental health episodes. He stated unlike the facility his clients are proposing, residents of the other facility are allowed to go to work and are allowed to have visitors. He emphasized that the two facilities have nothing to do with one another, and have different licensing requirements. Following the testimony of Sargent Bleggi, Mr. Peters elaborated on this distinction, stating that there is a fundamental misunderstanding regarding the nature of the proposed facility. He stated that the proposed facility will not be like the other facility currently operating in this neighborhood, and will not be like the Maryland Treatment Center on Avery Road. Mr. Peters stated that the proposed facility will be an upscale facility like the Betty Ford Clinic, and will not be a Medicaid facility. He stated that residents of the facility will pay between \$18,000 and \$30,000 per month for their treatment. He stated that there will be one scholarship for persons who cannot afford to pay that amount.

4. Nicholas Albaugh testified that he owns and operates treatment facilities, and is currently the Executive Director of Awakenings Recovery in Hagerstown, Maryland. Mr. Albaugh recounted his ten-plus years of experience working with residential substance abuse programs for the Board, including seven years at the Maryland Treatment Center on Avery Road. He testified that he has a degree in social work, and that he is a certified addiction counselor in the State of Maryland. Mr. Albaugh was accepted by the Board as an expert in substance abuse treatment.

Mr. Albaugh testified that he and his wife have an ownership interest in the proposed new facility, and that he is working as a consultant to get it up and running. He testified that the goal is to establish a residential treatment facility for persons with substance abuse disorders. Mr. Albaugh testified that residents of the facility would be medically stable, self-sufficient people. Mr. Albaugh testified that the facility would be staffed by two people from 7 a.m. until 11 p.m., and by one person in the overnight hours,

as follows. There will be a behavioral health technician and a counselor or therapist on site every day from 7 a.m. until 3 p.m., and from 3 p.m. to 11 p.m. There will be one staff person who is CPR-certified on site from 11 p.m. until 7 a.m. No staff will reside in the facility.

Mr. Albaugh testified that the average stay at the proposed facility is 28 days. He testified that residents cannot leave the premises, cannot have visitors, and cannot have jobs. He testified that residents would receive 35-40 hours of treatment a week in individual and group settings. He testified that they would also learn life skills such as cooking, laundry, cleaning, budgeting, and work readiness. Mr. Albaugh testified that this is a private facility. He testified that all residents will eat on site, and that staff will pick up food from Costco two to four times a month in a non-commercial vehicle (SUV).

In response to a Board question regarding the licensing process, Mr. Albaugh testified that the facility must get accredited before it can be licensed. He testified that the facility is seeking accreditation through the Commission on Accreditation of Rehabilitation Facilities (CARF) as a residential treatment facility for alcohol and other drugs. He testified that the CARF definition of "residential treatment" in the record at Exhibit 30(g) is accurate and describes the work they are seeking to do at the facility. Mr. Albaugh testified that once the facility is accredited, they will have to go to the State of Maryland to get it licensed.

Mr. Albaugh distinguished the accreditation of the proposed facility from that of the other facility already operating in the neighborhood, testifying that the other facility is accredited to operate a "crisis stabilization" program. See Exhibit 30(f). He testified that the proposed facility and the existing facility are not the same, explaining that a crisis stabilization facility is essentially to relieve stress on and take overflow from hospital emergency rooms and psychiatric wards. He testified that the persons at the other facility may have active, vivid hallucinations. In addition, Mr. Albaugh testified that to the best of his knowledge, residents of the other facility can leave the premises, have jobs, and have visitors.

Mr. Albaugh testified that no additional staff would be required if the proposed facility had 12 residents as opposed to the eight (8) that would be allowed by right, and that no additional traffic would be occasioned by the additional four (4) residents.

On cross examination, Mr. Albaugh testified that the proposed facility will be for the treatment of general substance use disorders, specifying alcohol and narcotics. He testified that residents will not be allowed to leave the property, but will be allowed to go outside on the property, stating that they could go on the patio or deck, or in designated areas of the yard that would be marked by posts. He testified that the behavioral health technician will monitor the residents and will direct them to stay in the permitted areas of the property.

Still on cross examination, Mr. Albaugh confirmed the staffing levels and shifts for the proposed facility (two staff from 7 a.m. to 3 p.m., two staff from 3 p.m. to 11 p.m., and one staff from 11 p.m. to 7 a.m.). He testified that between 7 a.m. and 3 p.m., the counselor

on staff would lead group and individual therapy, and the behavioral health specialist would perform functions such as conducting room checks, answering the phone, and getting the dining room ready for meals. In response to a question asking what residents would do for recreation in the evening, Mr. Albaugh testified that residents could play foosball and video games, read books, and receive life skills training. Regarding weekends, he testified that residents would be in group therapy for five to six hours. He testified that other activities, such as movie nights and speakers (or Zoom meetings) regarding 12-step programs, would also be held.

In response to a question about the typical relapse rate for an abuser of alcohol in a residential treatment program, Mr. Albaugh testified that the chance of relapse was very low because of the limited access to the outside world. In response to a question regarding the relapse rate of narcotics users in general (i.e. not limited to those in a residential treatment facility), Mr. Albaugh testified that he did not know the general relapse rate.

5. Kabir Singh testified that he is a co-owner, co-founder, and managing member of the proposed new facility. Mr. Singh testified that he is a certified peer recovery specialist, and that he sits on the County's Alcohol and Other Drug Abuse Advisory Council. He testified that the facility will "100% comply" with and will be operated in accordance with the standards and conditions of the existing special exception. Mr. Singh testified that residents of the proposed new facility will not be coming and going except at the beginning and end of their treatment, and that no residents will go out into the neighborhood.

6. In her Opening Statement, Ms. Rosenfeld stated that the Board was sitting to consider the transfer of this special exception under the minor modification standard, and suggested that if that standard was not met, a major modification would be needed. Ms. Rosenfeld stated that she would be presenting factual witnesses and testimony given in good faith about credible concerns.

7. Mr. Hatton testified that his property (Lot 34) is located on Granby Court. Referring to the survey plat in the record at Exhibit 30(a), Mr. Hatton testified that the dotted line on that survey plat shows a ten-foot wide, pedestrian-only easement between his property and the property immediately south of his property, also located on Granby Court. He testified that this easement allows for access between Granby Court and church property located on Muncaster Road that abuts his property to the east. He testified that the special exception property is located next to the church property. The survey plat shows that the special exception property (Lot 40) is located north of the church property, and that it abuts the northeast property line of Mr. Hatton's property. Mr. Hatton then shared with the Board a series of photographs showing his property, the easement, the church property, the special exception property, and a park that abuts both his property and the special exception property. See Exhibit 31(c). He testified that there is a privacy fence between his property and the church property that extends the entire length of the shared property line. He testified that there is also a privacy fence between the church property and the special exception property, but that that fence does not extend along the entirety of the shared property line. He testified that there is a fence for horses between the special exception property and the park. Mr. Hatton testified that there are four single-family

homes on his cul-de-sac with various lot sizes. He described the character of those properties as open.

Mr. Hatton testified that he is concerned that residents of the proposed facility could arrange to use the easement next to his house to access a more hidden area for substance purchases. He testified that he is worried because there is no special exception condition which prohibits residents of the facility from leaving the property. He testified that where there is substance abuse, there is the possibility of drug trafficking and crime, and that this concerns him because he has children. Mr. Hatton testified that the other facility currently operating in their neighborhood did not keep the promises they made with respect to the impact of that facility on the neighborhood.

Mr. Hatton testified that he has lived in his home since August 2012, and that the special exception on the subject property was operational until 2018. He testified that the residents of the prior facility were rarely seen, and would live on the subject property for years, not for 28 days, as will be the case for residents of the proposed new facility. Mr. Hatton testified that he lived in the neighborhood before the second facility currently operating in the neighborhood arrived in 2014. He testified that prior to opening that facility, the proprietors held a meeting with residents of the neighborhood at the Olney Public Library. He testified that everything that the proprietors said would not happen in connection with the location of their facility in this neighborhood has happened. Mr. Hatton testified that this other facility has impacted the community from an emergency services perspective, has changed traffic, and has diminished property values. He testified that Exhibit 31(d) is a real estate listing for the property next door to the other facility. He testified that the property was listed for sale in 2014 at a higher price, never sold, and is now abandoned. Mr. Hatton testified that he believes that property has not sold because it is next door to this other facility. He then shared listings for two other houses in the neighborhood, and stated that they sold for below-average prices. See Exhibit 31(e). He testified that he is concerned, based on this experience with what he described as a "similar" facility, that the value of his home will be affected if the proposed new facility is allowed to operate at the special exception property. Thus Mr. Hatton testified that the transfer of this special exception would change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use, apparently referring to the minor modification standard set forth in Section 59.7.3.1.K.2.a of the 2014 Zoning Ordinance.<sup>3</sup> He testified that the nature of the program at this facility has changed, and that there would be an impact on traffic, noting that residents of the former elder care home would stay two to four years, whereas residents of the proposed new facility would change every four weeks.

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<sup>3</sup> The Board notes at this juncture that despite the references by Ms. Rosenfeld and those persons opposed to the transfer of this special exception to the minor modification standard set forth in Section 59.7.3.1.K.2.a of the 2014 Zoning Ordinance, the standard to be applied in this case is the standard set forth in Section 59-G-1.3(c)(1) of the 2004 Zoning Ordinance, which states in relevant part that "[i]f the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition."

On cross-examination, Mr. Hatton acknowledged that persons other than residents of the proposed facility could access the pedestrian easement to procure illicit substances, and confirmed that his concern was that people who were residing at the new facility to get clean would use the easement to make those types of purchases. In response to further questioning, Mr. Hatton testified that residents of the former elder care home were allowed to leave the property. In response to a question asking if he understood the differences between the other facility currently operating in his neighborhood, which counsel described as a mental health facility, and the proposed new facility, Mr. Hatton testified that the existing facility has brought drug-related issues to the neighborhood, and that the neighborhood had been told by the proprietors of that facility that residents would not be allowed to leave, which had proven not to be true. In response to a question asking if the mold noted on the listing for the house next to the other facility could explain why that house has not sold, Mr. Hatton testified that mold would not prevent a sale, and that the mold occurred because the house was abandoned.

In response to a question on cross-examination noting that his letter requesting the public hearing set out five issues, none of which related to property values, and asking what the crux of his letter was, Mr. Hatton testified that the new facility is not supposed to impact the neighborhood. When asked how the new facility would impact the neighborhood, Mr. Hatton then testified, based on the facility already operating in his neighborhood, that any facility that deals with substance abuse would inevitably impact the community. In response to a question asking how a facility for 12 persons would have a greater impact on the neighborhood than a facility for eight (8) persons, Mr. Hatton testified that higher numbers of people translate to a higher potential for criminal activity.

On re-direct, Mr. Hatton testified that the special exception does not enable enforcement of the contract that residents of the proposed facility would sign, preventing them from leaving the premises and from having visitors. In addition, Mr. Hatton clarified on re-direct that the house next door to the other facility did not contain mold when it was originally put up for sale.

8. Sargent Bleggi testified that he is a Montgomery County Police Officer, and that he was a narcotics investigator for seven years prior to becoming a patrol road supervisor. He testified that he has had hundreds of hours of training, and has been recognized by the Circuit Court as an expert in drug trafficking. He was accepted as an expert with respect to drug use and trafficking, acknowledging on voir dire that his expertise pertained to law enforcement and not to treatment.

Sargent Bleggi testified that he has experience with group homes and has an opinion about their impact on neighborhoods. He testified that group homes have some "frequent flyers" and have a high volume of police calls. He testified that most people seeking to overcome opiate addiction have to seek help between six and ten times before they either succeed or succumb. Sargent Bleggi testified that he is not familiar with alcohol addiction.

Sargent Bleggi testified that he is familiar with the area in question, although not as familiar as Mr. Hatton. He testified that he saw no reason that a person in that area who was seeking drugs could not get them, and that based on his experience, dealers will make "drops" or deliveries for certain clients. He testified that the exchange of funds in these types of transactions can be done electronically.

Sargent Bleggi testified that he is familiar with the other facility currently operating in this neighborhood. He testified that he obtained the "Granby Heat Map," in the record at Exhibit 31(f), through a Maryland Public Information Act request, and that it shows the frequency of calls for service. Sargent Bleggi testified that there were 220 calls for service at the other facility between April 2017 and September 2020, which was 25% of the calls for service in the entire PRA (Police Response Area). See Exhibit 31(f). In response to a question from Ms. Rosenfeld asking if he knew if the other facility had drug users, Sargent Bleggi testified that there is an overlap of populations, explaining that it is common for people with mental illness to try to deal with their condition by using substances. Regarding Exhibit 31(g), he testified that it shows the types of emergency response to the other facility, explaining that numbers ending with a "1" indicate that law enforcement responded but there was no arrest or transport, and that numbers ending with a "2" indicate at a minimum that a report was written.

Sargent Bleggi testified, in response to a question from Ms. Rosenfeld asking if changing the use of the special exception facility from an elder care facility to a residential substance abuse treatment facility would change the nature, character, or intensity of the use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, that he believed the kind of facility that is proposed would have more impact than an elder care facility, but that he could not know for sure, since the facility had not opened yet.

In response to a final question from counsel, Sargent Bleggi testified that there is no way for law enforcement to enforce a contract between the proposed facility and its residents.

On cross examination, Sargent Bleggi testified that he has executed hundreds of search warrants, but none at a facility like the one proposed, which counsel stated would be the first of its kind in Montgomery County. He testified that a police officer generally cannot force a person who is outside of their home to return home. Sargent Bleggi testified that the big problem with the other facility that is already operating in the neighborhood is the lack of control, and he stated that any conditions related to control that the Board of Appeals or the Department of Health and Human Services could put in place with respect to the proposed facility would help to reassure neighbors.

In response to a Board question asking if he had any scientific basis for his concern that the proposed use would pose a risk to the community or would have a greater impact on the community than other types of facilities, Sargent Bleggi testified that he did not, but then testified that in general, emergency services receives a lot of calls for people who are attempting to recover from substance abuse. He testified that there are four or five group

homes in a small area near the special exception property, and that he believed they should be spread out. Sargent Bleggi testified that when these facilities are not managed properly, there should be a smooth procedure to correct any problems and, if necessary, to force the facilities to close if the problems are not addressed. He testified that it should not be so difficult to fix problems at these facilities.

9. Ramesh Rasanayagan testified that he operates an assisted living facility at 6000 Granby Road. He testified that his facility serves an elderly population, and described the activity level at his facility as "calm." Mr. Rasanayagan testified that his facility is staffed by two persons during the day and one at night. He testified that he had personal knowledge of the special exception facility when it was run by Rafiq Inayat, and that he had actually tried to purchase that facility until Mr. Inayat told him that he had returned his State and County licenses. Mr. Rasanayagan testified that based on the testimony given, he would expect the new facility to be a more active facility than an elder care facility.

On cross examination, Mr. Rasanayagan testified that the residents of his facility are permitted to have visitors, noting that he was not allowed to restrict visitation. In addition, he testified that under normal circumstances (i.e. non-COVID), residents are permitted to come and go on a routine basis.

10. Bruce Wiley testified that he and his family live next door to the other existing facility that Mr. Hatton and Sargent Bleggi had testified about. He testified that his family has lived in their house for 14 years, and that the other facility opened about six years ago. In response to a question asking if he knew of any residents at that facility who had a drug abuse problem, he testified that he did not. Mr. Wiley testified that he has generalized experiences with the residents of that facility, and some experiences that he termed "outliers." He described several of these "outlier" experiences for the Board, including one that had happened the previous week, and testified that even if these experiences are outliers, when they are viewed together, they add up.

Mr. Wiley stated that he understood from the testimony that the proposed new facility would be well controlled, but testified that the existing facility had given the neighborhood the same assurances. He testified that representatives of the existing facility had assured the neighborhood that their facility would have no impact on the community, but that that has turned out not to be true, stating that their lives have been greatly altered by that facility. Mr. Wiley testified that residents of the existing facility next door to his house walk around the neighborhood unsupervised, and that his daughters are not even allowed to go outside by themselves. He questioned how the proposed new facility would follow through on its promises, and what safeguards would be put in place to protect the community.

Mr. Wiley testified that his house is situated in the neighborhood between two nursing homes. He testified that the difference between those homes and the facility next to his house is huge. Mr. Wiley testified that there is zero activity at the nursing homes, and contrasted that with the busyness of the facility next door to his house, which he testified has increased traffic on his cul-de-sac tenfold. Mr. Wiley testified that the

neighborhood has no way to enforce the promises and concessions made by the facility next to his house, and testified that the constant uncertainty that he and his family live with is unsettling. He stated that maybe the neighborhood's experience with the proposed new facility will be different.

11. In his closing argument, Mr. Peters stated that the question for the Board is whether there will be a greater impact on the community from the 12 residents at the proposed new special exception facility compared to the 12 elderly residents of the former facility. He stated that there is also a question as to whether the impact of this facility, if operated with 12 residents, will differ from its operation with eight (8) residents, which would be allowed by-right. Mr. Peters noted that Mr. Albaugh had testified as an expert that staffing would be the same for an eight- or 12-person facility, and that residents of the proposed new facility will not be permitted to leave. He stated that there will be no visitors to the proposed facility, whereas the previous facility operating under the special exception allowed visitors. He stated that food will be delivered as before. Finally, Mr. Peters stated that Mr. Hatton is the only person complaining about the transfer and that he lives behind and catty-corner to the subject property; he noted that the abutting neighbors to the right and left of the subject property on Muncaster Road have not complained about the transfer.

Mr. Peters stated that the printout from the website of the other facility to which neighbors have sought to compare the proposed facility shows that part of the treatment of those individuals is to go out into the community. See Exhibit 30(f). He stated that that facility assists persons with mental disorders, and that the proposed new facility will treat persons with alcohol and substance abuse problems.

In response to Ms. Rosenfeld's closing argument, Mr. Peters stated the requested transfer is not a major modification. He stated that the proposed facility is one-of-a-kind, and will be licensed as a level 3.5 residential facility. He stated that the fact that residents cannot come and go is part of the facility's licensing. Mr. Peters stated that if residents are allowed to leave, the facility will lose its accreditation, which in turn would cause it to lose its license.

12. In her closing argument, Ms. Rosenfeld clarified that four neighbors have registered their opposition to the transfer, not just Mr. Hatton. She stated that the purpose of the hearing is to determine whether the transfer of this special exception would change the nature, character, or intensity of the use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. She stated that the only conditions of this special exception are that it have no more than 12 residents and that delivery of supplies be by personal vehicle as opposed to by truck. See Exhibit 30(a). Ms. Rosenfeld asserted that the requested transfer does not meet the standard for the grant of a minor modification based on the change in the character of the residents. She stated that the residents of the proposed facility will be more ambulatory, and that there will be more activity on the site and more potential for problems. Thus she asserted that an adverse impact on the neighborhood could reasonably be expected. She requested that the Board find that the proposed change constitutes a major modification of this special exception, which would entail a hearing where enforceable conditions could be imposed.

Ms. Rosenfeld stated that representations made to the community in connection with the other facility located in this neighborhood were not kept.

## **FINDINGS OF THE BOARD**

Based on the representations contained in the Consent Petition and Motion to Add Co-Petitioner/Holder submitted by Mr. Peters and other exhibits of record, and on the testimony of Mr. Albaugh and Mr. Singh, the Board finds that the requested transfer of this special exception will not substantially change the nature, character or intensity of this special exception use, and will not substantially change its effect on traffic or the immediate neighborhood. In support of this, the Board makes the following findings:

1. Based on the testimony of Mr. Albaugh and the exhibits of record, notably Exhibits 21, 21(a), 30(f), and 30(g), the Board finds that the new facility proposed by Gopher Certificates LLC and Hagerstown Recovery LLC is distinguishable from the other facility currently operating in this neighborhood, to which the neighbors have sought to compare the new facility, for a number of reasons. First, the facilities will have different types of licenses. The proposed facility is seeking accreditation as a residential treatment facility for alcohol and other drugs, whereas the existing facility is accredited to operate a "crisis stabilization" program. See Exhibits 30(f) and 30(g). Second, the proposed facility will treat persons with substance disorders, whereas the existing facility assists those with psychiatric and other mental issues. In addition, unlike the existing facility, residents of the proposed new facility will not be allowed to leave the facility for the duration of their treatment, will not be allowed to have any visitors, and will not have jobs. Finally, while the persons in neighborhood have expressed their concern that the proposed new facility will cause the same problems that the neighborhood has experienced with the other facility, the Board notes that these concerns are speculative and lack an evidentiary basis, since the proposed new facility is not yet operational.

2. Based on the representations in the Consent Petition, the Board finds that group homes for the elderly and group homes for persons with disabilities, including persons undergoing treatment for substance abuse, are considered to be the same special exception use. See Exhibit 21. Thus the Board finds that the transfer of this special exception use will not cause a substantial change to its nature or character.

3. Based on the Consent Petition and Motion to Add Co-Petitioner/Holder, the Board finds that as the new property owner and lessee, Gopher Certificates LLC and Hagerstown Recovery LLC, are seeking to have this existing special exception transferred to them as co-holders. The Board finds that their interests in the property are substantiated by the Deed and Lease provided by Mr. Peters, and that current special exception holder Leah Berhane has consented in writing to the transfer. In addition, the Board finds that Gopher Certificates LLC and Hagerstown Recovery LLC are not seeking any modifications to the existing special exception, but rather are only seeking its transfer. See Exhibits 21 and 21(a). Per the testimony of Mr. Singh, the new co-holders agree to fully comply with the terms and conditions of the existing special exception.

4. Based on the Consent Petition and the testimony of Mr. Albaugh and Mr. Singh, the Board finds that Gopher Certificates LLC and Hagerstown Recovery LLC are not proposing to increase the number of beds at this existing special exception facility above the number currently allowed by the special exception (12), and are not proposing any increase in staffing. Indeed, per the Consent Petition, the Board finds that staffing for the new group home will be lower than for the current operator. Accordingly, the Board finds that the requested transfer will not substantially impact the intensity of this special exception use.

5. Based on the Consent Petition and the testimony of Mr. Albaugh, the Board finds that the residents of the proposed new facility will not have cars, and will not be allowed to leave the facility or have visitors. In light of this finding, and the finding in the previous paragraph regarding staffing, the Board finds that the traffic impact from the new facility on the immediate neighborhood will be no worse, and will perhaps be better, than the traffic impact from previous iterations of this special exception use, and accordingly finds that the proposed transfer will not have a substantial impact on traffic.

6. Having found (1) that no changes to the terms and conditions of the existing special exception are being requested, (2) that no increase in the number of beds is being requested, (3) that the proposed new facility, assuming transfer of the use, will have fewer staff and likely generate less traffic than previous iterations of this special exception use, and (4) that the proposed new facility is distinguishable from the other facility to which the neighbors seek to compare it in terms of its purpose, population served, and outward impact (i.e. residents cannot leave the facility and cannot have visitors), the Board finds that the requested transfer will not have a substantial impact on the immediate neighborhood.

Therefore, based upon the foregoing and for the reasons set forth in the Board's September 9, 2020, Resolution, the Board finds that the transfer of this special exception, granted by the Board effective September 9, 2020, meets the standard set forth in Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance (2004), and should be reinstated.

On a motion by Mary Gonzales, seconded by Katherine Freeman, with John H. Pentecost, Chair, Bruce Goldensohn, Vice Chair, and Richard Melnick in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that the Board's September 9, 2020, Resolution to Reopen the Record and to Transfer the Special Exception, previously suspended by the Board in a Resolution dated October 2, 2020, is hereby **REINSTATED** for the reasons stated therein and in this Resolution; and

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that the record in Case No. S-2324 is re-opened to receive all correspondence and exhibits submitted in connection with this hearing and not previously entered into the record; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.

  
\_\_\_\_\_  
John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 2<sup>nd</sup> day of December, 2020.

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**NOTE:**

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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. 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.

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boal/>  
(240) 777-6600**

**CASE NO. S-2324 [A-4946]**

**PETITION OF LEAH BERHANE  
[NEW HOLDERS: GOPHER CERTIFICATES LLC  
AND HAGERSTOWN RECOVERY LLC]  
[NOTE: RESOLUTION TO TRANSFER CURRENTLY SUSPENDED]**

**RESOLUTION TO RE-OPEN THE RECORD,  
REFER COMPLAINT TO DPS, DENY MOTION TO DISMISS,  
AND CONFIRM HEARING DATE  
(Resolution Adopted November 4, 2020)  
(Effective Date of Resolution: November 12, 2020)**

Case No. S-2324 was granted to Judith Sines on June 1, 1998, to permit a group home for twelve elderly residents pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance in effect at the time. In related Case No. A-4946, the Board granted a four-footside lot line variance as well as a 10.3 foot variance for the width of the driveway. This special exception was transferred to Rafiq and Jagwati Inayat, effective June 24, 2004, and to Leah Berhane, effective September 24, 2019. Effective September 9, 2020, the special exception was transferred to Gopher Certificates LLC and Hagerstown Recovery LLC. After receiving a timely request for a public hearing on the transfer from Patrick Hatton, on behalf of himself and numerous other residents of the Granby, Artesian, and Muncaster Road Neighborhood, the Board issued a Resolution with an effective date of October 2, 2020, which suspended the September 9, 2020, transfer of this special exception pending the outcome of a public hearing on the matter. That hearing is currently scheduled for November 18, 2020.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

The Board of Appeals has received a Complaint regarding the above-captioned special exception from Michele Rosenfeld, Esquire, on behalf of neighbors Patrick Hatton, Chad Bleggi, Craig Berrington, and Teresa Casafranca. Ms. Rosenfeld asserts in her Complaint that this special exception has been abandoned, and accordingly, cannot be

transferred. She asks that the Board refer her Complaint to the County's Department of Permitting Services ("DPS") for inspection. If DPS finds that the special exception has been abandoned, Ms. Rosenfeld requests that the transfer of the special exception be denied.

In addition, the Board is in receipt of a Motion to Dismiss the afore-mentioned Complaint, filed by James Peters, Esquire, on behalf of Petitioners Gopher Certificates LLC and Hagerstown Recovery LLC. In his Motion to Dismiss, Mr. Peters states that the procedures set forth in the Zoning Ordinance that are necessary prerequisites to a finding of abandonment have not been followed, and that the Complaint should therefore be dismissed as improper. In addition, Mr. Peters contends that the special exception has not been abandoned.

The Board of Appeals considered Ms. Rosenberg's Complaint and Mr. Peters' Motion to Dismiss, with their respective attachments, at a remote Worksession held on November 4, 2020. All participation was done using Microsoft Teams. Ms. Rosenberg participated on behalf of her clients, and Mr. Peters participated, with his associate Benjamin Kurtz, Esquire, on behalf of Gopher Certificates LLC and Hagerstown Recovery LLC. After hearing from counsel and discussing the matter amongst themselves, the Board determined to refer the Complaint to the Department of Permitting Services to determine whether the special exception has been abandoned, as alleged in the Complaint, and to deny the Motion to Dismiss. The Board further determined that the hearing on the transfer should be held as scheduled on November 18, 2020.

Accordingly, by copy of this Resolution, the Board (1) re-opens the record to receive Ms. Rosenberg's Complaint and Mr. Peters' Motion to Dismiss, with all attachments, (2) refers these materials to the Department of Permitting Services as a complaint, (3) requests that the Department investigate the complaint and provide the Board with a written report of its findings, (4) denies the Motion to Dismiss, and (5) confirms that the previously noticed November 18, 2020, public hearing on the transfer of this special exception will go forward as scheduled.

On a motion by John H. Pentecost, Chair, seconded by Mary Gonzales, with Bruce Goldensohn, Vice Chair, Katherine Freeman, and Richard Melnick 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.

  
\_\_\_\_\_  
John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 12th day of November, 2020.

  
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 Book. 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.

**BOARD OF APPEALS  
for  
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(240) 777-6600

**CASE NO. S-2324 [A-4946]**

**PETITION OF LEAH BERHANE  
[NEW HOLDERS: GOPHER CERTIFICATES LLC  
AND HAGERSTOWN RECOVERY LLC]**

**NOTICE OF PUBLIC HEARING ON TRANSFER OF SPECIAL EXCEPTION**

The Board of Appeals has received a timely request from Patrick Hatton, on behalf of himself and numerous other residents of the Granby, Artesian, and Muncaster Road Neighborhood, for a public hearing on the transfer granted by the Board in the above-captioned case on September 9, 2020. The Board has suspended the transfer.

Please take notice that the Board of Appeals for Montgomery County, Maryland, will hold a public hearing, likely using technology in lieu of in-person attendance due to COVID-19, **on Wednesday, the 18th day of November, 2020, at 9:30 a.m.**, to determine whether the transfer that the Board granted in Case No. S-2324, effective September 19, 2020, substantially changes the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood. Instructions for remote participation in this hearing, assuming the hearing is held remotely, will be posted on the Board's webpage (address above) once they are available. If the hearing is not held remotely, it will be held in a temporary hearing room located at the Broome School, 751 Twinbrook Parkway, Rockville, Maryland, on the above-scheduled date and time. Please check with Board staff as the hearing date approaches to see if proceedings are still being conducted remotely.

Notices forwarded this 2nd day of October, 2020, to:

Leah Berhane  
Gopher Certificates LLC  
Hagerstown Recovery LLC  
James Peters, Esquire  
Patrick Hatton  
Neighbors listed on Mr. Hatton's letter

Charles Frederick, Esquire, Associate County Attorney  
Washington Suburban Sanitary Commission  
State Highway Administration  
County Board of Education  
Contiguous and confronting property owners  
Local Citizens Associations

County Board of Appeals

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**All parties who make submissions, after an initial filing, in Special Exception, Variance and Administrative Appeals cases, must furnish copies of the submission to all other parties in the case. For the purpose of this requirement, a party includes: (1) Counsel of record who have formally entered their appearance; (2) Any person to whom the Board of Appeals has granted Intervener status; and (3) The Applicant, Petitioner or Appellant in the case.**

**Submissions must be accompanied by a written statement certifying that copies have been sent to all parties. Effective September 6, 2002, failure to supply such written certification will result in refusal of the submission.**

**Case files are available for public review at the office of the Board of Appeals, Monday through Friday, 8:30 a.m. – 4:00 p.m.**

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**CASE NO. S-2324 [A-4946]**

**PETITION OF LEAH BERHANE  
[NEW HOLDERS: GOPHER CERTIFICATES LLC  
AND HAGERSTOWN RECOVERY LLC]**

**RESOLUTION TO SUSPEND TRANSFER  
AND HOLD HEARING**

(Resolution Adopted September 30, 2020)  
(Effective Date of Resolution: October 2, 2020)

Case No. S-2324 was granted to Judith Sines on June 1, 1998, to permit a group home for twelve elderly residents pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance in effect at the time. In related Case No. A-4946, the Board granted a four-foot side lot line variance as well as a 10.3 foot variance for the width of the driveway. This special exception was transferred to Rafiq and Jagwati Inayat, effective June 24, 2004, and to Leah Berhane, effective September 24, 2019. Effective September 9, 2020, the special exception was transferred to Gopher Certificates LLC and Hagerstown Recovery LLC.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

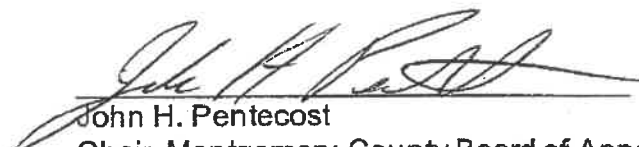
The Board is in receipt of a letter dated September 21, 2020, from Patrick Hatton, on behalf of himself and numerous other residents of the Granby, Artesian, and Muncaster Road Neighborhood, requesting a public hearing on the Board's September 9, 2020, Resolution to Reopen the Record and to Transfer the Special Exception. Due to COVID-19, the Board of Appeals considered Mr. Hatton's request at a remote Worksession held on September 30, 2020, using Microsoft Teams. Mr. Hatton participated in support of the request for a public hearing. James Peters, Esquire, also participated, on behalf of Gopher Certificates LLC and Hagerstown Recovery LLC, in opposition to the request.

Because Case No. S-2324 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects to

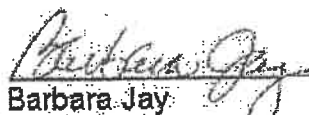
proceed under the current Zoning Ordinance. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance (2004) provides that when the Board of Appeals grants an administrative modification, "any party may, within 15 days after the Board's resolution is mailed, request a public hearing on the Board's action," and that "[i]f a request for a hearing is received, the Board must suspend its decision and conduct a public hearing to consider the action taken." The Board finds that Mr. Hatton's written request for a hearing, on behalf of himself and the listed neighbors, is timely, and that a public hearing must be held.

Therefore, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Richard Melnick in agreement, the Board suspends its September 9, 2020, Resolution transferring this special exception, and will hold a public hearing to determine whether this transfer substantially changes the nature, character or intensity of the special exception use, or its effect on traffic or on the immediate neighborhood.

**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.

  
John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 2nd day of October, 2020.

  
Barbara Jay  
Executive Director

**NOTE:**

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.

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland Avenue  
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

**CASE NO. S-2324 [A-4946]**

**PETITION OF LEAH BERHANE  
[NEW HOLDERS: GOPHER CERTIFICATES LLC  
AND HAGERSTOWN RECOVERY LLC]**

**RESOLUTION TO REOPEN THE RECORD AND  
TO TRANSFER THE SPECIAL EXCEPTION**

(Resolution Adopted September 2, 2020)  
(Effective Date of Resolution: September 9, 2020)

Case No. S-2324 was granted to Judith Sines on June 1, 1998, to permit a group home for twelve elderly residents pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance in effect at the time. In related Case No. A-4946, the Board granted a four-foot side lot line variance as well as a 10.3 foot variance for the width of the driveway. This special exception was transferred to Rafiq and Jagwati Inayat, effective June 24, 2004, and to Leah Berhane, effective September 24, 2019.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

On August 11, 2020, the Board of Appeals received a Consent Petition with attachments from James Peters, Esquire, on behalf of his client Gopher Certificates LLC, indicating that his client now owns the subject property and has leased it to Hagerstown Recovery LLC. Mr. Peters requests in his Consent Petition, and in his Motion to Add Co-Petitioner/Holder, that the special exception be transferred to Gopher Certificates LLC and Hagerstown Recovery LLC as co-holders. He indicates in his Consent Petition that the special exception use is not changing, noting that group homes for the elderly and for residential substance abuse programs are both considered to be Residential Care Facilities under the current Zoning Ordinance. He states that staffing and traffic will likely be less for the new owner/operator than for the current operator. Accordingly, Mr. Peters states that the desired transfer will not change the nature, character, or intensity of the

use, or its effect on traffic or the immediate neighborhood. He includes written consent to the transfer from current special exception holder Leah Berhane, as well as a copy of the Deed evidencing ownership of the subject property by Gopher Certificates LLC, and a copy of the lease between Gopher Certificates LLC and Hagerstown Recovery LLC.

Due to COVID-19, the Board of Appeals considered the transfer request at a remote Worksession held using Microsoft Teams on September 2, 2020. Mr. Peters participated in support of the transfer request on behalf of his client. He stated that Gopher Certificates LLC now owns the special exception property, and has leased it to Hagerstown Recovery LLC. He reiterated that the special exception use is not changing, and stated that the new owner and operator agree to comply with the terms and conditions of the existing special exception and all applicable laws.

Because Case No. S-2324 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects otherwise. Rule 12.2 of the Board of Appeals Rules of Procedure [Resolution Numbers 12-865 (Adopted October 27, 1992), 14-742 (Adopted January 30, 2001) and 15-554 (Adopted March 23, 2004)] provides that the transfer of a special exception is a modification under Section 59-G-1.3 of the Zoning Ordinance (2004). Section 59-G-1.3(c)(1) of that Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the transfer of the special exception from one holder to another, to be operated in accordance with the terms and conditions under which it was originally granted or modified by the Board of Appeals, will not change the nature, character, or intensity of the use, or substantially change its impact on the immediate neighborhood or on traffic. Therefore, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Richard Melnick in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2324 [A-4946] is re-opened to receive Mr. Peters's Consent Petition with attachments and his Motion to Add Co-Petitioner/Holder; and

**BE IT FURTHER RESOLVED** by the Board of Appeals that the request to transfer this special exception to Gopher Certificates LLC and Hagerstown Recovery LLC is granted; and

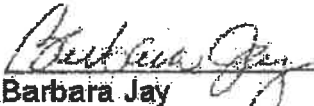
**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 9th day of September, 2020.



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Barbara Jay  
Executive Director

**NOTE:**

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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. 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.

**BOARD OF APPEALS  
for  
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(240) 777-6600

**CASE NO. S-2324 [A-4946]**

**PETITION OF RAFIQ AND JAGWATI INAYAT  
[NEW HOLDER: LEAH BERHANE]**

**RESOLUTION TO REOPEN THE RECORD AND  
TO TRANSFER THE SPECIAL EXCEPTION**

(Resolution Adopted September 4, 2019)  
(Effective Date of Resolution: September 24, 2019)

Case No. S-2324 was granted to Judith Sines on June 1, 1998, to permit a group home for twelve elderly residents pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance in effect at the time. In related Case No. A-4946, the Board granted a four-foot side lot line variance as well as a 10.3 foot variance for the width of the driveway. Effective June 24, 2004, this special exception was transferred to Rafiq and Jagwati Inayat.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

On August 5, 2019, the Board of Appeals received a letter with attachments from Leah Berhane, the current owner of the property, requesting that the special exception be transferred to her name and stating that she agrees to be bound by the existing special exception conditions. Ms. Berhane includes written consent to the transfer from Rafiq Inayat and a copy of the Deed evidencing her ownership of the subject property with her request.

The Board of Appeals considered the transfer request at its Worksession on September 4, 2019. Because Case No. S-2324 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects otherwise. Rule 12.2 of the Board of Appeals Rules of Procedure [Resolution Numbers 12-865 (Adopted October 27, 1992), 14-742 (Adopted January 30, 2001) and 15-554 (Adopted March 23, 2004)] provides that the transfer of a special

exception is a modification under Section 59-G-1.3 of the Zoning Ordinance (2004). Section 59-G-1.3(c)(1) of that Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the transfer of the special exception from one holder to another, to be operated in accordance with the terms and conditions under which it was originally granted or modified by the Board of Appeals, will not intensify the use or substantially change its impact on the immediate neighborhood or on traffic. Therefore, on a motion by John H. Pentecost, Chair, seconded by Stanley B. Boyd, Vice Chair, with Bruce Goldensohn, Katherine Freeman, and Jon W. Cook in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2324 [A-4946] is re-opened to receive Ms. Berhane's letter with attachments; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the request to transfer the special exception to Leah Berhane is granted; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.

  
\_\_\_\_\_  
John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 24th day of September, 2019.

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**NOTE:**

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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. 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.

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/board.asp](http://www.montgomerycountymd.gov/content/council/boa/board.asp)

**Case No. S-2324 [A-4946]**

**PETITIONS OF JUDITH E. SINES  
[NEW HOLDERS: RAFIQ AND JAGWATI INAYAT]**

**RESOLUTION TO TRANSFER SPECIAL EXCEPTION**

(Resolution Adopted June 9, 2004)

(Effective Date of Resolution: June 24, 2004)

The Board of Appeals has received a letter, dated April 30, 2004, from Judith Sines. Ms. Sines requests transfer of the captioned special exception to Rafiq and Jagwati Inayat, the current owners of the subject property. She encloses a copy of the deed conveying the property. The Board of Appeals granted Case No. S-2324 to Judith Sines on June 1, 1998, to permit a group home for twelve elderly residents. In Case No. A-4946, the Board granted a four-foot side lot line variance as well as a 10.3 foot variance for the width of the driveway.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

The Board of Appeals considered Ms. Sines's letter at its Worksession on June 9, 2004. Rule 12.2 of the Board of Appeals Rules of Procedure [Resolution No. 12-865, October 27, 1992] provides that the transfer of a special exception is a modification under Section 59-G-1.3 of the Zoning Ordinance. Section 59-G-1.3(c)(1) of Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the transfer of the special exception from one holder to another, to be operated in accordance with the terms and conditions under which it was originally granted, will not intensify the use or substantially change its impact on the immediate neighborhood or on traffic. Therefore, on a motion by Allison Ishihara Fultz,

seconded by Angelo M. Caputo, with Donna L. Barron and Donald H. Spence, Jr., Chairman in agreement and Louise L. Mayer necessarily absent:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the request to transfer Case No. S-2324, Petition of Judith Sines, to Rafiq and Jagwati Inayat is **granted**; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 24<sup>th</sup> day of June, 2004.



Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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.

BOARD OF APPEALS  
For  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(301)217-6600

Case Nos. S-2324 And A-4946

PETITIONS OF JUDITH E. SINES  
(Hearing held April 15, 1998)

OPINION OF THE BOARD

Effective date of Opinion: June 1, 1998

Case No. S-2324 is an application filed for a special exception pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance to permit a group home for 12 elderly residents.

Case No. A-4946 is an application for two variances pursuant to Section 59-A-4.11(b) of the Zoning Ordinance.

The proposed parking facility requires a four (4) foot variance as it is within thirteen (13) feet of the side lot line. The required setback is seventeen (17) feet, in accordance with Section 59-E-2.4.

Section 59-E-2.8 requires all parking facilities within a residential zone that combine entrance and exit driveways to be not less than twenty (20) feet in width. The existing driveway width is 9'9". A variance of 10'3" is required.

The subject property is Lot 40, Block B, Muncaster Manor Subdivision, located at 19120 Muncaster Road, Derwood, Maryland, in the RE-1 Zone.

Decision of the Board: Special exception GRANTED, subject  
Conditions enumerated herein.

Variances GRANTED.

PETITIONER'S CASE

The applicant presently operates a group home at the subject property with 8 elderly residents and has requested a special exception to increase the number to 12 elderly residents. The home specializes in residents with dementia and Alzheimer's who are cared for 24 hours a day, seven days a week.

Ms. Sines testified that she has operated this group home for about six years and has all the licenses necessary to continue this operation. She stated that she added an additional septic system two years ago and that the well and septic system has been approved for up to 12 residents.

The property is improved with a one story 5000 square foot brick residence all on one floor with no steps. There is a swimming pool and accessory building in the rear yard, as shown on Exhibit No. 4. These structures are set back on a very deep lot extending more than 667 from the 241 feet of frontage on Muncaster Road. The 9

foot wide, 630 foot long concrete driveway extends from the road to a parking area for 6 vehicles at the residence. The variance of 4 feet from the driveway setback requirement of 17 feet, and 10 foot 3 inch relief from a 20 foot wide driveway width requirement is based on existing conditions of the property and the driveway. The technical staff supports the variance as a wider driveway in this instance appears unnecessary and would result in a commercial appearance to the property, which can be avoided with the granting of a variance.

The neighborhood of the subject property is characterized by single family detached homes in the RE-1 Zone. The subject property is in the Upper Rock Creek Master Plan and the proposed use is an allowable special exception in the RE-1 Zone.

A traffic impact study is not required since the use generates less than 50 total peak hour trips.

Ms. Sines stated that she has the requisite 9 parking spaces.

#### ADJOINING PROPERTY OWNER

Norma Gilford, an adjoining property owner, appeared at the hearing to express her concerns about the value of her property. Her home is currently on the market and she is worried that people do not want to live next door to a group home and as a result has lost sales. Prospective buyers see a number of elderly residents and thinks there is large amount of activity. Ms. Guilford also testified that there were many deliveries by trucks to the residence. She thinks the home is a nice looking place and would not want the driveway enlarged. She was concerned about a possible water problem, which she does not have now, with the additional residents.

Ms. Sines addressed Ms. Gilford's concern by stating that she was no longer using a company that delivered food in trucks, she was doing her own grocery shopping, so there would be no more trucks coming to the subject property.

#### FINDINGS OF THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

The M-NCPPC technical staff recommended approval of S-2324 with conditions. The staff determined that there should be very little disturbance to the environment since the use is using the existing dwelling and there is no proposed building expansion. In addition, the staff was of the opinion that the use is benign in nature and will not have any adverse impact on any adjacent property (Exhibit No. 11).

#### FINDINGS OF THE BOARD

Based on the testimony and exhibits in the record, the Board finds that the proposed special exception satisfies the specific standards of the special exception in Section 59-G-2.26, and the general conditions for granting a special exception in Section 59-G-1.21 of the Zoning Ordinance. The proposed group home is a permissible special exception in the zone and it will have no detrimental impact on the surrounding properties. There will be no changes to the structure.

The Board also finds that the variances for the existing driveway and the parking facility can be granted. The Board finds that the demands on the driveway are insufficient to warrant the full width of a two-way driveway. The proposed use is a low intensity use, and the only traffic on the driveway will be a few employees and visitors. Granting the variances permits the retention of the driveway which will reduce the possibility that the property will have the look of a commercial property. Furthermore, the Board finds that the driveway is very long, terminating at the back of the property in nine parking spaces. Expansion of the driveway would significantly increase the impervious surface and the Board finds that there is no justification for that action. The variances contribute to the goal of retaining the residential appearance of the subject property.

Accordingly, the Board grants the requested special exception and variances, subject to the following conditions:

1. As required by Section 59-A-1.27, the holder of the special exception is bound by all the testimony and exhibits of record, the testimony of her witnesses and representations of her attorneys, to the extent that such evidence and representations are identified in this Opinion and except as altered by compliance with the following conditions.
2. The holder of the special exception must obtain approval of a driveway access by Department of Public Works and Transportation.
3. The group home is limited to 12 residents.
4. All normal supplies will be brought to the property in personal vehicles. No routine deliveries will arrive by truck.

The Board adopted the following Resolution:

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

On a motion by Wendell M. Holloway, seconded by Louise L. Mayer, with Angelo M. Caputo, Donna L. Barron, and Susan W. Turnbull, Chair, in agreement, the Board adopted the foregoing resolution.

I do hereby certify that the foregoing Opinion was officially entered in the Opinion book of the County Board of Appeals this 1st day of June, 1998.

  
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Tedi S. Osias  
Executive Secretary to the Board

Note: See Section 59-A-4.53 of the Zoning Ordinance for information regarding the twenty-four-month period within which the right granted by the Board for a special exception must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

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 Procedures.

See the Board's Rules of Procedures for information about the process for requesting reconsideration.