

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660
<https://montgomerycountymd.gov/ozah/>

IN THE MATTER OF:

ELP Bethesda at Rock Spring
Applicant

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OZAH Case No. LMA H-135

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Before: Lynn Robeson Hannan, Hearing Examiner

ORDER RE-OPENING AND CLOSING THE RECORD

ELP Bethesda at Rock Spring LLC (ELP or Applicant) filed Local Map Amendment (LMA) Application No. H-135 on December 20, 2019. The Hearing Examiner recommended approval of the application on May 8, 2020. On June 2, 2020, the Applicant submitted a revised Floating Zone Plan adding a binding element restricting the use to a continuing care retirement community subject to the occupancy requirements in Section 59.3.3.2.E. of the Montgomery County Zoning Ordinance. Exhibit 60(a). The additional binding element states (*Id.*):

4. The project will satisfy the use restrictions of a residential care facility pursuant to Zoning Ordinance Section 3.3.2.E.

The use restrictions under that section of the Zoning Ordinance limit occupancy as follows:

iii. Occupancy of a dwelling unit is restricted to the following:

- (a) a senior adult, as defined in Section 1.4.2, Defined Terms;
- (b) other members of the household of a senior adult, regardless of age;
- (c) a resident care-giver, if needed to assist a senior resident; or
- (d) a person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist seniors as defined in that program.

(e) If imposing age restrictions that would limit occupancy otherwise allowed by this Subsection, the facility must only impose age restrictions that satisfy at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, as amended, or the state Fair Housing Act, Subtitle 7 of Title 20 of the Annotated Code of Maryland, State Government Article, as amended.

There was ample evidence in the record that the Applicant intended to develop a continuing care facility for seniors. Exhibit 52, T. 13, 15-17, 48. The revised FZP and covenants only confirm the Applicant's intended use and makes it binding on future approvals. It does not change the substance of the Hearing Examiner's Report recommending approval issued on May 8, 2020. As a result, the Hearing Examiner determines that the revised plans are a technical correction to clarify the binding nature of the proposed use.

For this reason, the Hearing Examiner reopens the record solely to receive the Applicant's e-mail submitting the revised documents (Exhibit 59), and the revised FZP (Exhibit 60) and revised covenants containing the additional binding element (Exhibit 61). The record closes immediately as of June 2, 2020, the date of receipt.

Issued this 2nd day of June, 2020.



Lynn Robeson Hannan
Hearing Examiner

COPIES TO:

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