

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Rockville, Maryland 20850
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Case No. S-2474

PETITION OF NATIONAL SENIORS' HOUSING CORPORATION
(Hearing held June 27, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, February 27, 2002)

Case No. S-2474 is a petition pursuant to Section 59-G-2.35 of the Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended) for a special exception to construct housing and related facilities for the elderly and handicapped at 11920 Darnestown Road, North Potomac, Maryland.

Decision of the Board: Special exception GRANTED, subject to conditions enumerated below.

A public hearing was held on Wednesday, June 27, 2001, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Appearing on behalf of the Petitioner were Jody S. Kline, Esquire; Richard Koch, President of the petitioner; Jay O'Brien, Architect; John Sekerak, Land Planner and Landscape Architect; James Glascock, Civil Engineer; and Stephen Petersen, Traffic Engineer.

Also participating in the proceedings were Kathy Reilly, Technical Staff, Maryland-National Capital Park and Planning Commission (M-NCPPC), who testified neither in favor, nor in opposition to the proposed special exception; David Gardner, Attorney for the Orchard Knolls Homeowners Association; and Rosemary Giebel, owner of an adjoining veterinary clinic and condominium association member.

Martin Klauber, the People's Counsel for Montgomery County, Maryland, participated in the proceedings in support of the requested special exception.

EVIDENCE PRESENTED TO THE BOARD:

1. The Petitioner and contract purchaser, National Seniors' Housing Corporation, requests a special exception to construct housing for the elderly and handicapped on 2.99 acres of property located at 11920 Darnestown Road (MD 28), North Potomac, Maryland. The subject property is zoned R-200/TDR and is located on the south side of Darnestown Road, Maryland Route 28 (Route 28), at its intersection with Tschiffley Square Road.
2. The subject property, rectangular in shape with moderate terrain, contains approximately 162 feet of frontage on Route 28. The property is undeveloped and is partially wooded in the center, rear, and along the western portions of the site. The property contains a stream valley buffer, wetlands, and floodplain. Access to the proposed site will be from Route 28, a state-maintained public right-of-way.

3. North of the site and across Route 28 is Kentlands, a mixed-use planned development. Kentlands is located in the City of Gaithersburg, Maryland. The properties to the south and west are zoned R-200/TDR and are developed with single-family residences along the south and townhouses along the west. East of the site, the property is zoned R-200/TDR and is developed with a medical use office park complex of two and three story buildings developed under Special Exception No. BAS-1436. Directly adjacent to and east of the office park complex is Prince of Peace Lutheran Church.
4. Other special exceptions in the area include: BAS-95, a horticultural nursery approved 6/7/72 (and modified 7/20/77 by BAS-569); BAS-1462, a veterinary hospital approved 2/10/88; BAS-1436, medical and dental offices approved 4/19/88; BAS-1845, an automobile filling station approved 9/21/65; and BAS-1249, a drive-in restaurant approved 3/19/86.
5. The applicant proposes to construct a residential community for elderly or handicapped persons, offering single-family style villas and apartment homes. Both housing styles are proposed for independent living. Under the proposal, the applicant will construct four villa buildings and one apartment building that will resemble a mansion. The applicant proposes to create a total of 37 housing units. Each of the four villas will contain three separate units. Two-bedroom villas will contain 1,400 square feet. Two-bedroom villas with a den will contain 1,700 square feet. Each villa will have an attached garage. The mansion will contain 25 units: nine two-bedroom units of approximately 1,000 square feet; six one-bedroom units of approximately 800 square feet; and ten one-bedroom units of approximately 750 square feet. Eight of the one-bedroom units in this building will be designated for "low-income" individuals. An elevator will provide access to and from the garage and between floors.
6. The proposal provides for common areas on the first floor of the mansion, including a community recreation hall, mailroom, and administrative offices. The mansion would have security on all entry doors, including the parking garage doors. A community mailroom will be located inside the mansion for residents' mail pick-up and deliveries. Residents will also be able to coordinate overnight carrier pick-ups and deliveries at the office in the mansion. The community recreation hall will be available for use by all residents of the community and will be furnished with a computer and communications center, casual seating, games tables, large screen television, fireplace, and warming kitchen. Curbside pick-up of trash for residents in the villas will be provided, while the dumpster for trash from the mansion will be located inside the garage.
7. Staff will coordinate the maintenance and upkeep of the units and the social and educational activities at the recreation hall. One staff person will be associated with the recreation use referenced in No. 6 above and will be scheduled to work from 10:00 a.m. until 8:00 p.m.
8. Entrance to the site will be provided by an access road from Route 28. The access road will run parallel to the eastern lot line and will serve all of the proposed housing units.
9. The site will contain a total of 39 garage parking spaces (27 spaces underneath the mansion and 12 spaces in the villas), and 21 surface parking spaces.
10. A walking trail, with benches, will run along both the eastern and western lot lines and connect in front of the last villa building.

11. The site is located in the 1980 Adopted and Approved Potomac Subregion Master Plan area. While the master plan does not contain specific language related to this proposed use, housing for the elderly and handicapped is permitted by special exception in the R-200 Zone.
12. Technical Staff of M-NCPPC reviewed and recommended approval of the subject application, finding that under Local Area Transportation Review (LATR), the proposed 37 housing units for the elderly and handicapped would generate eight trips during the AM peak hours and nine trips during the PM peak hours. Therefore, Staff concluded that the proposed use does not require a traffic study under the LATR requirements (Exhibit No. 26). For Policy Area Transportation Review, the current FY01 Annual Growth Policy indicates that the North Potomac Policy Area has housing staging ceiling capacity available, 1,384 units as of April 30, 2001, to accommodate the proposed development (Exhibit No. 26). Staff found that access to the site from Route 28 aligned with Tschiffley Square Road on the north side and the proposed traffic circulation system plan are adequate for the proposed use (Exhibit No. 26). Finally, the Staff found that the proposed use would have no detrimental effect on adjacent intersections and roads (Exhibit No. 26).
13. Staff of the Maryland State Highway Administration (SHA) has confirmed that the right-of-way and intersection configuration shown on the applicant's submitted site development plan is consistent with SHA's Route 28 "Widening Project," and that the "jug handle" shown on the applicant's site plan would provide access to the adjoining townhouse portion of Orchard Knolls subdivision (Exhibits No. 23 and No. 26). In addition, SHA has indicated that construction of the access to the site will be incorporated into the Route 28 Widening Project (Exhibits No. 23 and No. 26).
14. A Natural Resources Inventory (#4-01122) was submitted by the applicant and approved by M-NCPPC. In addition, the applicant has submitted a preliminary Forest Conservation Plan, indicating that approximately 0.6 acres of on-site forest will be placed into a Category I Conservation Easement (Exhibit No. 10).
15. The site is located within the Quince Orchard Knolls tributary of the Muddy Branch watershed. The Countywide Stream Protection Strategy rates Quince Orchard Knolls tributary as having good stream conditions and good habitat conditions, labeling it as a Watershed Protection Area (Exhibit No. 26).
16. A stormwater management concept plan was submitted to the Montgomery County Department of Permitting Services (DPS) and is pending approval. The applicant proposes water quality control via an underground sand filter and water quantity control via an underground detention vault. The applicant must comply with DPS requirements for stormwater management and sediment and erosion control.
17. In response to a letter from the Orchard Knolls Homeowners Association (Exhibit No. 28), M-NCPPC Staff found that the configuration for the proposed "jug handle" entrance to the property was sufficiently coordinated and reviewed by the SHA (Exhibit No. 26). Staff found that the applicant's proposed landscaping plan (Exhibit No. 24 (c-d)) would provide effective screening from the adjacent townhouses and would ensure compatibility with the adjacent Orchard Knolls community (Exhibit No. 26).
18. The applicant's lighting plan proposes to locate 14-foot pole lights along the drive aisle, and individually-controlled 8-foot pole lights next to the proposed buildings (Exhibit No. 24(c)). Fixtures for the 14-foot pole lights are detailed in Exhibit No. 34 (d). Mr. Koch testified that no pole lights are proposed in the western side yard or on the proposed trail along the western lot line. In addition, Mr. O'Brien testified that it proposes to use

residential-type lighting fixtures with 60-watt light bulbs over the balconies and front doors of the villas (Exhibit No. 34 (b)). The total light impact for the proposed project is detailed on a photometric analysis (Exhibit Nos. 22 (b) and 22 (f)).

19. The parking garage located underneath the proposed mansion will contain garage doors at the entrance, rather than gates. Vents or openings for ventilation to the basement garage along the back wall of the mansion will be covered with louvers, which will further diminish any light from the garage under the mansion. In addition, a 6-foot-high fence is to be installed to further screen any lights originating from the basement garage.
20. A proposed lit sign will be enclosed within a brick wall at the entrance to the property (Exhibit No. 33).
21. The subject property is not recorded by plat of subdivision. The use will require approval of a preliminary plan of subdivision to conform to Chapter 50 of the Montgomery County Code.
22. Staff found that the proposed use satisfies the general and specific requirements of the Zoning Ordinance and recommended approval of the request for this special exception, subject to conditions detailed in the Staff Report (Exhibit No. 26).

FINDINGS OF THE BOARD:

Based on the Petitioner's binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested special exception can be granted.

Section 59-G-1.2 Conditions for granting.

59-G-1.21 Standard for evaluation. A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals ... must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board finds that the inherent adverse characteristics of the proposed housing for the elderly are the size and scale of the proposed building, the amount of impervious surface for driveways and parking areas, and its effects on stormwater management and lighting. The Board finds that the above-referenced physical characteristics and operational characteristics of the proposed use, including personal care service and on-site kitchens providing meal services, are no different than what is normally associated with housing for the elderly facilities. With the subject special exception application, the Board finds that given the building's design, scope of services provided, and the small number of units proposed, the inherent adverse effects associated with the application will likely be less than what is often associated with a use of this type. The Board does not find any non-inherent adverse effects associated with the proposed use.

Section 59-G-1.21 General Conditions.

A special exception may be granted when the Board finds from a preponderance of the evidence of record that the proposed use:

- (1) *Is a permissible special exception in the zone.*

The Board finds that the proposed housing for the elderly is allowed in the R-200 Zone, in accordance with Section 59-G-1.21(a)(1) of the Zoning Ordinance.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The Board finds that the proposed application satisfies the standards and requirements for housing for the elderly under Section 59-G-2.35, in accordance with Section 59-G-1.21(a)(2) of the Zoning Ordinance.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting of a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board finds that the subject property is covered by the 1980 Potomac Master Plan, which supports the existing R-200/TDR Zone for the property, in accordance with Section 59-G 1.21(a)(3). Housing for the elderly is allowed by special exception in that zone.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.*

The Board finds that the proposed use will be in harmony with the general character of the neighborhood when considering population density, design, scale, and bulk of the proposed new structure, intensity and character of activity, traffic and parking conditions, and number of similar uses, in accordance with Section 59-G-1.21(a)(4) of the Zoning Ordinance. The Board finds that the buildings' placement and design appear as a modest residential community of five buildings and that the building setbacks exceed the minimum standards for the side and rear yards.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, in accordance with Section 59-G-1.21(a)(5) of the Zoning Ordinance.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed use will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity in accordance with Section 59-G-1.21(a)(6) of the Zoning Ordinance.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Board finds that the proposed use will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature, in accordance with Section 59-G-1.21(a)(7) of the Zoning Ordinance.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective on any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, in accordance with Section 59-G-1.21(a)(8) of the Zoning Ordinance.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

The Board finds that at the time of subdivision, the adequacy of public facilities will be addressed by the Planning Board.

(ii) With regard to findings related to public roads, the Board ... must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The Board finds that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Section 59-G-2.35 Housing and related facilities for elderly or handicapped persons.

A special exception may be granted for housing and related facilities for elderly or handicapped persons, subject to the following provisions:

(a) Prerequisites for granting:

(1) A minimum of 10 percent of the dwelling units is permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs in accord with Executive regulations. Income levels are defined as follows:

(A) "MPDU income" is the income limit determined by the Department of Housing and Community Affairs in the administration of the MPDU program, as prescribed by Chapter 25A of the County Code.

(B) "Low income" is income at or below 60 percent of the area median income adjusted for household size.

(C) "Very low income" is income at or below 50 percent of the area median income adjusted for household size.

(D) "Area median income" is as determined annually by the U.S. Department of Housing and Urban Development.

In accordance with Section 59-G-2.35(a)(1), the Board finds that the applicant's proposal to provide 20%, or eight units, as affordable housing units, meets the definition for "low income."

(2) Taking into account the size of the units, the services to be provided, the income levels to be served, and the location of the site, there is a need for such use because:

(A) There is an insufficient amount of such housing and facilities to serve the existing population of the County, and

(B) The need for such housing and facilities cannot be met by development in accordance with development standards not requiring a special exception.

In making this finding, the Board must consider demographic data, including projections and analyses provided by the Planning Board and County government, as well as evidence provided by parties to the case. Such data will be evaluated by the technical staff or the Planning Board.

In accordance with Section 59-G-2.35(a)(2), the Board finds that there is a need for the applicant's proposed use. The M-NCPPC Research Division staff has reviewed the applicant's need study (Exhibit No. 17b) in the context of several studies generated by M-NCPPC staff, primarily the report of "Need for Elderly Housing in the Potomac Subregion," prepared for the recently published Potomac Subregion Master Plan Staff Draft (Exhibit No. 26). Both the applicant's study and the staff study of senior housing in Potomac show the need for moderate numbers of additional units in Potomac. The applicant has demonstrated that the current supply of middle-income housing in their market area and Countywide is very small, representing only 1.2 percent capture rate in the area and less Countywide. The

applicant's market area comprises a radius of eight miles, including most of the Potomac Subregion, Gaithersburg, and Rockville. While Staff might add a few more units to the middle-income category, its report is very clear about assumptions and decision rules and makes a convincing case for very low capture rate. Staff's May 2001 Countywide study (Exhibit No. 26) shows an overall capture rate of 8.5 percent of the total County population age 65 and older. The middle-income rate is clearly far below average.

Staff estimates that unmet need in the Potomac Subregion is 450 units, but expects that only 100 to 150 units will be located within the Subregion due to limited land with public sewer and water service. Both the Staff and applicant's estimates easily accommodate the proposed 37 units.

The Zoning Ordinance requires a showing of Countywide need. The Board finds that the applicant's study demonstrates this need. The proposed project is expected to provide a total of 37 units, including eight for low-income households and twenty-nine for middle-income households. The low-income units will fulfill the Zoning Ordinance requirement for affordable housing. The need is especially great for units to serve the proposed income levels. Because senior housing is more labor intensive than other housing, the market has trouble providing middle-income units even though the largest number of households fall within this income range.

- (2) *The proposed use will not produce adverse effects on the use or development of the surrounding area because of noise, traffic, type of physical activity or any other reason.*

In accordance with Section 59-G-2.35(3), the Board finds that the proposed use will not produce adverse effects because of noise, traffic, type of physical activity, or any other reason. The arrangement and design of the use suggests a mix of housing types for residents. The proposed architecture and landscaping establishes a residential compatibility with the surrounding residential area.

- (3) *The site or the proposed facility has adequate accessibility to public transportation, medical services, shopping areas, recreational and other community services frequently desired by elder or handicapped persons.*

In accordance with Section 59-G-2.35(4), the Board finds that the site has adequate accessibility to the nearby shopping areas, recreational and community facilities. An existing Ride-On bus stop, located on Route 28 at the site's entrance, will provide access to public transit.

- (4) *The site or the proposed facility is reasonably well protected from excessive noise, air pollution and other harmful physical influences.*

In accordance with Section 59-G-2.35(5), the Board finds that the proposed use will be reasonably protected from excessive noise, air pollution, and other harmful physical influences. Issues related to noise will again be addressed during preliminary plan of subdivision review with respect to the use of building materials and attenuation measures.

(b) *Occupancy of a dwelling unit is restricted to the following:*

- (1) *An elderly or handicapped person, as defined in Section 59-A-2.1;*
- (2) *The spouse of an elderly or handicapped resident, regardless of age or handicap;*

- (3) *A resident care-giver, if needed to assist an elderly or handicapped resident; or*
- (3) *In a development designed primarily for handicapped rather than elderly persons, the parent, daughter, son, sister or brother of a handicapped resident, regardless of age or handicap.*

Additional occupancy provisions are:

- (5) *Age restrictions must comply with 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, and subsequent amendments thereto. (In that Act, "familial status" refers to discrimination against families with children.)*
- (6) *Resident staff necessary for operation of the facility are also allowed to live on site.*

In accordance with Section 59-G-2.35(b), the Board finds that based on the evidence submitted by the applicant, the residents of this use will meet the definition for elderly persons contained in the Zoning Ordinance.

(c) *Development standards, other than density, in residential zones where allowed by special exception, except R-30, R-20, R-10, and R-H:*

- (1) *Minimum net lot area: 1 1/2 acres, but not less than the minimum net lot area specified by the relevant zone.*

In accordance with Section 59-G-2.35(c)(1), the Board finds that this application satisfies the requirements of sub-section (c)(1), as the site is approximately 2.99 acres which exceeds the minimum lot size of 1/1/2 acres.

(2) *Minimum setbacks:*

- (A) *From street: 50 feet. Except for an access driveway, this must be maintained as green area. However, if development does not exceed the height limit of the applicable one-family zone, the minimum setback specified in the zone applies.*

In accordance with Section 59-G-2.35(c)(2)(A), the Board finds that the subject use will be set back 63 feet from Route 28, which meets the minimum 40-foot setback requirement of the zone.

- (B) *From side and rear lot lines: 25 feet or as specified by the relevant zone, whichever is greater:*

In accordance with Section 59-G-2.35(c)(2)(B), the Board finds that the proposed use meets the setback requirements of this sub-section. In the R-200 Zone, the side lot line setbacks are 12 feet for one side and a sum of 25 feet for both side yards. The setbacks for the proposed buildings along the western side lot line varies from 27 feet to 60 feet. Along the eastern side lot line, adjacent to the office park complex, proposed building setbacks range from 30 to 70 feet, well in excess of the 25-foot minimum requirement. The rear lot line setback is 30 feet in the R-200 Zone. The last villa building will be set back approximately 154 feet from the rear lot line.

- (3) *Maximum building height: 20 feet, provided the following height-to-setback ratio is achieved for heights above the maximum prescribed by the applicable zone:*
- (A) *Rural Cluster, Rural, RE-2, REC, RE-1, R-200, R-150 Zones: One foot of height is allowed for each one foot of setback from the side and rear lot lines, up to a height of 50 feet. Between 50 and 120 feet of height, one additional foot of height is allowed for each additional 2 feet of setback beyond the minimum side and rear yard setbacks prescribed by paragraph (2)(b), above.*

In accordance with Section 59-G-2.35(c)(3)(A), the Board finds that the proposed use meets the height requirements of this sub-section. The height for the tallest proposed elderly housing building is 48 feet. The height limit in the R-200 Zone is 50 feet.

- (4) *Maximum lot coverage: As specified by the relevant zone, provided the coverage complies with the setback requirements of paragraphs (c)(2) and (3) of this section.*
- (c) *Development standards, other than density, in the R-30, R-20, R-10, and R-H Zones are as specified by the relevant zone in Section 59-C-2.41, except that lot coverage and building setbacks may be modified as specified in Section 59-C-2.42 concerning standards for moderately priced dwelling units.*

In accordance with Section 59-G-2.35(d), the Board finds that lot coverage in the R-200 Zone is 25%. This elderly housing use proposes lot coverage of 17%.

- (d) *Maximum density:*
- (1) *In the Rural, Rural Cluster, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-40, RT.-6, RT.-8, RT.-10, and RT.-12.5 Zones, the number of units is governed by the overall size of the building as determined in accordance with the combined height and setback standards specified by paragraphs (c)(2) and (3) of this section. Minimum unit size is governed by the minimum space and other relevant standards of Chapter 26, "Housing Standards," of the Montgomery County Code, as amended.*

In accordance with Section 59-G-2.35(e), the Board finds that based on the applicant's testimony, the units will conform to the minimum standards for unit sizes as specified in Chapter 26 of the County Code.

- (e) *Parking and Loading:*
- (1) *Parking must be provided in accordance with the provisions Section 59-E-3.7, "Schedule of Requirements." The Board of Appeals must require adequate scheduling and long-term continuation of any services for which parking credits are granted in accordance with Section 59-E-3.33(b) and may require additional parking for any facilities and services provided in accordance with paragraph (g)(2) of this section, if they serve nonresident elderly or handicapped persons. When considering the need for additional parking the Board may consider the availability of nearby public or private parking facilities.*

In accordance with Section 59-G-2.35(f)(1), the Board finds that this proposed use will require 44 parking spaces. based on 16 one- bedroom units and 21 two-bedroom units. The

applicant is proposing 8 units, located in the mansion, which will be designated as affordable units for low-income individuals. Under Section 59-E-3.33 of the Zoning Ordinance, the applicant is allowed a 20% reduction in required parking spaces for the provision of affordable units. After this reduction is taken, the proposed use would require 36 spaces. The applicant is providing 60 parking spaces for this use, thus satisfying this requirement.

- (2) Loading areas to serve any facilities, such as kitchens or retail stores, requiring truck deliveries must be screened so as not to be visible from any lot line abutting or confronting land in a one-family residential zone.

In accordance with Section 59-G-2.35(f)(2), the Board finds that there are no facilities proposed that require loading areas, such as kitchens or retail stores. The applicant has submitted a landscape and lighting plan for the site (Exhibit No. 24(d)). The plan shows landscaping along lot lines abutting and confronting the site. The landscaping along the eastern and western lot lines abutting one-family residential zones will mitigate views from these properties. The Board finds that this proposed landscaping plan establishes compatibility along the adjacent residential properties to the west and east. This plan also shows foundation plantings around all proposed buildings and the surface parking area. Consequently, the Board approves the landscaping and lighting plan because it adequately addresses screening around the above-mentioned areas and satisfies the requirements and standards of the Zoning Ordinance.

(f) *Additional provisions:*

- (1) *One or more of the following ancillary facilities and services may be included to serve the residents and possible nonresident elderly or handicapped persons. The Board may restrict the availability of such services to nonresidents and specify the manner in which this is publicized.*
 - (A) *Provision for on-site meal service;*
 - (B) *Medical or therapy facilities or space for mobile medical or therapy services;*
 - (B) *Nursing care;*
 - (D) *Personal care services;*
 - (E) *Day care for elderly or handicapped persons;*
 - (F) *On-site facilities for recreation, hobbies or similar activities; or*
 - (G) *Transportation to such off-site facilities and services as shopping, religious, community or recreational facilities, or medical services.*

In accordance with Section 59-G-2.35(g)(1), the Board finds that the proposed use will satisfy the requirements of this sub-section. The applicant's statement of operations (Exhibit 3) lists on-site recreational and educational activities that will occur in the community recreation hall. A walking trail with benches is located along both side lot lines and is designated for active recreation.

- (2) *Retail facilities may be included to serve exclusively the*

residents of the building.

In accordance with Section 59-G-2.35(g)(2), the Board, based on the applicant's testimony, finds that there are no retail facilities proposed under this application.

- (3) *The application must contain a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical, and public services within a one mile radius of the proposed facility.*

In accordance with Section 59-G-2.35(g)(3), the Board finds that the applicant has submitted the required map. (Exhibits 9 and 11)

- (4) *Construction is subject to all applicable federal, state, and County licenses or certificates.*

In accordance with Section 59-G-2.35(g)(4), the Board finds that the applicant will be required to obtain applicable licenses and certificates, if any, prior to the issuance of building permits.

Therefore, based on the foregoing, the Board **GRANTS** the requested special exception for housing and related facilities for the elderly, subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion granting the special exception or variance.
2. Approval of Final Forest Conservation Plan prior to release of sediment and erosion control or building permit, as appropriate.
3. Compliance with Department of Permitting Services requirements for stormwater management.
4. Conformance with Chapter 50 (Subdivision Regulations) of the Montgomery County Code.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron and Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman 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 case.

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 27th day of February, 2002.

Katherine Freeman
Executive Secretary to the Board

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 any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

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.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

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