

BOARD OF APPEALS
for

MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
240-777-6600

Case No. S-2487
(OZAH Referral No. 02-10)

PETITION OF ORCHARD DEVELOPMENT CORPORATION

OPINION OF THE BOARD

(Effective Date of Opinion: March 1, 2002)

Case No. S-2487 requests a special exception for housing and related facilities for elderly or handicapped persons pursuant to Section 59-G-2.35 of the Montgomery County Zoning Ordinance.

On September 6, 2001, the Board of Appeals referred the above-referenced case to the Hearing Examiner, pursuant to the authority contained in Section 59-A-4.125 of the Zoning Ordinance.

The subject property is known as Parcel 64, Deer Park Subdivision, located at 12621 Old Columbia Pike, Silver Spring, Maryland, in the R-200 Zone.

Decision of the Board: Requested Special Exception **granted**,
subject to conditions enumerated below.

The Board has carefully reviewed the Report and Recommendation of the Hearing Examiner dated January 25, 2002. At its Worksession on February 6, 2002, the Board reviewed the Hearing Examiner's Report and Recommendation and voted to approve the special exception on the merits pursuant to the recommended conditions of the Hearing Examiner (Report, pages 28-30). Those amendments are as follows:

1. The recommendation in paragraph 1 shall be deleted and shall be replaced with the following:

The Petitioner shall be bound by all of its testimony and exhibits of the record, testimony of its witnesses, and the representations of its attorneys, to the extent that such evidence and representations are identified in the Board's Opinion granting the special exception.

2. Recommendation No. 8 shall be amended as follows:

The Petitioner shall provide the residents of the facility with daily shuttle bus service providing access to the nearby shopping facilities and local medical facilities identified in this Report and Recommendation.

3. There shall be added to the conditions a new paragraph 9 which shall read as follows:

The facility shall be constructed in such a manner as to mitigate the noise impact from U.S. Route 29 on the residents of the facility. The applicant shall maintain an ambient indoor noise level of not more than forty-five (45) DBA. This noise level shall be obtained through the provision of triple-glazed windows throughout the facilities. As all building facades will be brick (Report, page 13), the Board will not require resilient channel building construction.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, 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 Report and Recommendation of the Hearing Examiner in Case No. S-2487 (OZAH Referral No. 02-10) be adopted as the Resolution required by law as its decision in 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 1st day of March, 2002.

Katherine Freeman
Executive Secretary to the Board

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 (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.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four (24) month 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.