

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2712

**PETITION OF SUNRISE DEVELOPMENT, INC.
d/b/a SUNRISE SENIOR LIVING**

OPINION OF THE BOARD

(Opinion Adopted April 2, 2008)

(Effective Date of Opinion: April 10, 2008)

Case No. S-2712 is an application for a special exception, pursuant to Section 59-G-2.27 of the Zoning Ordinance, to build and operate an assisted living facility. The Hearing Examiner for Montgomery County held a public hearing on the application on January 14, 2008, closed the record on March 6, 2008, and on March 10, 2008 issued a Report and Recommendation for approval of the special Exception.

Decision of the Board: Special Exception **Granted** Subject to
The Conditions Enumerated Below.

The subject property is Parcel 359, located at Olney Sandy Spring Road (between Prince Philip Drive and Old Baltimore Road), Olney, Maryland, 20832, in the RE2/TDR Zone.

The Board of Appeals considered the Report and Recommendation at its Worksession on April 2, 2008. After careful consideration and review of the record in the case, on a motion by David K. Perdue, seconded by Catherine G. Titus, Vice-Chair, with Caryn L. Hines, Wendell M. Holloway and Allison Ishihara Fultz, Chair in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Board adopts the Hearing Examiner's Report and Recommendation and **grants** the special exception subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel identified in this report;

2. The Petitioner must possess, not later than the issuance date of the use and occupancy certificate, valid State of Maryland and County licenses, certificates, and/or registrations that may be required for a domiciliary care home which provides assisted living to the elderly;
3. The maximum allowable number of units (all of which have no kitchen) must not exceed 74, with a maximum of 94 beds.
4. The maximum allowable number of employees on-site at any one time is 30. They will work in three shifts (7:00 A.M. to 3:00 P.M., 3:00 P.M. to 11:00 P.M., and 11:00 P.M. to 7:00 A.M.); however, staff will arrive at staggered hours between 7:00 A.M. and 9:00 A.M. to minimize disruptions.
5. Except in emergencies, deliveries of food and medical supplies are limited to Monday through Friday, 7:00 A.M. to 7:00 P.M. and Saturday, 9:00 A.M. to 4:00 P.M. and trash pick-ups are limited to Monday through Friday, 7:00 A.M. to 7:00 P.M. and Saturday, 9:00 A.M. to 4:00 P.M. These time parameters may be reviewed by the Community Liaison Council established pursuant to condition numbered 18 below, if in actual practice, early deliveries and trash pickups are creating undue noise disturbances or traffic hazards. The Board will retain jurisdiction to review this issue and modify the times permitted for deliveries and trash pickups if it determines that the time of the deliveries and pickups is creating a nuisance.
6. Petitioner must provide a 58-foot wide landscape buffer along Olney-Sandy Spring Road (MD Route 108), as well as the other landscaping shown on its final Landscape Plan (Exhibit 52(c)).
7. Before the issuance of a building permit, Petitioner must apply for Preliminary Plan review and recordation of a plat, per Chapter 50 of the Montgomery County Code.
8. At the time of Preliminary Plan, to satisfy the FY 2007-2009 Growth Policy APF test for Policy Area Mobility Review (PAMR), Petitioner must submit a traffic mitigation agreement (to mitigate 25% of site-generated weekday peak-hour trips) for review by MNCPPC Transportation Planning Staff and approval by the Planning Board.
9. At the time of Preliminary Plan, Petitioner must show on the plan the centerline for MD Route 108 and dedicate the land along the property frontage necessary to create a minimum right-of-way width of 75-feet from the centerline of MD Route 108.
10. Petitioner must provide two (2) bike lockers for employees at the facility, the location of which is to be finalized at subdivision. (This is separate from any PAMR requirements that may be imposed as part of the preliminary plan.)

11. At the time of Preliminary Plan, Petitioner must submit to the Planning Board executed copies of the agreements and easements specified below in Conditions 14 c., d. and e. Following approval of the preliminary plan by the Planning Board, copies of those executed documents should also be filed with the Board of Appeals.
12. The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan, dated December 11, 2007, until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.
13. Petitioner must maintain 45 parking spaces called for in their Site Plan (Exhibit 52(b)), and may not expand or reduce the parking facility without express permission from the Board through modification of this special exception;
14. Petitioner must comply with the terms set forth on pages 11 -12 of its revised Statement of Operations (Exhibit 52(a)), unless modified by the Board of Appeals. These terms include:
 - a. Trash receptacles to service the property shall be located within the building in the location shown on the revised special exception plan. There will be no dumpster located on the Property.
 - b. The central HVAC equipment will be located on the rooftop of the Sunrise facility no closer than 20 feet from the building edge behind a mansard roof.
 - c. The owners of the adjacent property at 2701 Olney Sandy Spring Road (currently Janet and John Ring) have exclusive access and use of the patio area, behind the residence on that property, which encroaches on the Sunrise property. This area is designated "Exclusive Use and Access Area" on the Special Exception Plan (Site Plan), as revised 1/30/08 and is designated "Exclusive Use and Access Area" on the Landscape Plan 1/30/08. An easement providing for such exclusive access and use shall be filed by Sunrise in the Land Records of Montgomery County. This easement must be recorded in the Land Records for Montgomery County prior to issuance of any certificate of occupancy.
 - d. The owners of the adjacent property at 2701 Olney Sandy Spring Road (currently Janet and John Ring) shall be granted an ingress and egress access easement over the Sunrise property. An easement providing for such ingress and egress shall be filed by Sunrise in the Land Records of Montgomery County. This easement must be recorded in the Land Records for Montgomery County prior to issuance of any certificate of occupancy.
 - e. The area designated "Landscape Buffer" on the Special Exception Plan (Site Plan), as revised 1/30/08 [Exhibit 52(b)] and the area designated

"Landscape Buffer" on the Landscape Plan, as revised 1/30/08 [Exhibit 52(c)] along the western edge of the Sunrise Property is to be used exclusively as a landscape buffer to provide buffering for the property at 2701 Olney Sandy Spring Road. This area shall consist solely of existing trees and additional plantings, a retaining wall and vinyl privacy fence, as set forth on the Landscape Plan. Minor modifications to the Landscape Buffer may be made by mutual consent of the property owners at 2701 Olney Sandy Spring Road and Sunrise to maintain or improve the buffering effect. An easement so limiting the use of the area shall be filed by Sunrise in the Land Records of Montgomery County. This easement must be recorded in the Land Records for Montgomery County prior to issuance of any certificate of occupancy.

15. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9)(i), approval of this special exception is conditioned upon subdivision approval by the Planning Board. If changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must file a copy of the revised site and related plans with the Board of Appeals.
16. A sign permit must be obtained for any sign, and a copy of the permit and diagram of the approved sign should be submitted to the Board of Appeals before the sign is posted.
17. Petitioner must insure that noise from its generators, air-conditioning and other equipment does not exceed County standards.
18. Petitioner must create a Community Liaison Council (CLC) to discuss and address issues of concern to Petitioner and/or the community. The CLC shall consist of Petitioner's representative and representatives from the Greater Olney Civic Association (GOCA), Lake Hallowell, Hallowell, and any other civic association or homeowners association within the defined neighborhood wishing to participate. The adjacent neighbors (the Rings and representatives from Shotley Bridge Place, Fort William Drive and Eaglesham Place) must also be invited to participate, and the People's Counsel must be included as an *ex officio* member of the CLC. Meetings must be held at least twice a year, and minutes must be kept by Petitioner and filed with the Board of Appeals annually.
19. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 10th day of April, 2008.

Katherine Freeman
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 (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. 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.