

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-2721

**PETITION OF ADVENTIST HEALTHCARE, INCORPORATED
BY GEOFFREY A. MORGAN**

OPINION OF THE BOARD

(Opinion Adopted September 10, 2008)
(Effective Date of Opinion: October 27, 2008)

Case No. S-2721 is an application for a special exception, pursuant to Section 59-G-2.31 of the Zoning Ordinance, to permit the relocation of Washington Adventist Hospital from its current location in Takoma Park to a new site in West Farm Technology Park. The Hearing Examiner for Montgomery County held a hearing on the application on May 5, 2008, closed the record in the case on August 15, 2008, and on August 19, 2008 issued a Report and Recommendation for approval of the special exception.

The subject property is Lot BB, CC, RR, SS and MMM, Westfarm Technology Park Subdivision, located at 12030-12110 Plum Orchard Drive, Silver Spring, Maryland, 20904, in the I-1 and I-3 Zone.

Decision of the Board: Special exception **Granted**, subject to
The conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on September 10, 2008. The Board commends the Applicant for a thorough and well thought out application. After careful consideration and review of the record, and with slight revisions to Conditions three, eight, eleven and twelve, the Board adopts the Report and Recommendation, and grants the special exception subject to the following conditions:

1. Petitioner must comply with the conditions of the Preliminary Forest Conservation Plan (PFCP) and any Final Forest Conservation Plan approved by the Planning Board. The PFCP conditions include:
 - a. Revise the PFCP to include the following:

- i. Avoid or minimize disturbance of environmental buffers, including wetlands. Revisions must be consistent with the two revised site plans (entitled “North Parking Garage and MOB2 Plan Revision” and “Main Hospital Entry Site Plan Revision”) and alternate waterline plan (entitled “Alternate Waterline Location Plan”).
 - ii. Show proposed limits of disturbance that avoid environmental buffers and that are realistically located with respect to proposed structures.
 - b. Category I conservation easement must be placed over forest retention areas, forest planting areas, and that portion of the environmental buffer that does not include a County stormwater management easement.
 - c. Category I conservation easement must be shown on record plats.
2. Petitioner must comply with Montgomery County green building requirements.¹
3. Revise all forest conservation plans to avoid or minimize disturbance of environmental buffers, including wetlands, consistent with the two revised site plans and waterline alignment plan (entitled “North Parking Garage and MOB2 Plan Revision” and “Main Hospital Entry Site Plan Revision” and the “Alternate Waterline Alignment” plan received March 27, 2008).
4. Coordinate with MNCPPC and County DPS to implement measures to maintain water flow to the forested wetland and its buffer near the northern parking garage. Cleaner water discharges from rooftops, green roofs, etc., should be examined to replace surface and groundwater flows lost to upstream development.
5. To ensure adequacy of public facilities, Petitioner must satisfy the following conditions:²
 - a. Limit development on the property as part of this special exception and future Site Plan for the property to a total built density of 803,570 square-feet, including a main hospital building, an ambulatory care building, a faith center, two medical office buildings, two parking structures, and a helipad. No additional uses may be permitted on the property unless the special exception is modified within the APF validity period.
 - b. Implement road improvements and other installations required in Conditions c, g, h, i, j and k as described in the schedule below. The Applicant must complete and submit to Montgomery County Department of Transportation (DOT) conceptual designs for the road improvements and other installations,

¹ This conditions differs from Condition #2 proposed by the Planning Board because that condition called for Petitioner to revise its special exception site plan relating to parking, and Petitioner has already done so in filing its amended Composite Special Exception Site Plan (Exhibit 161(e)).

² The conditions listed are those recommended jointly by Technical Staff and DOT (Exhibit 176) following the hearing. They preserve the intent of the Planning Board recommendations, but have been updated to include modifications sought by DOT after the hearing.

including signal warrant studies, at least 45 days in advance of the Planning Board's public hearing on the Applicant's Site Plan. Where possible, the Applicant may meet the provision of required turn lanes in some cases by restriping existing paving. Final design drawings for the road improvements and other installations must be submitted to all relevant permitting agencies prior to the release of building permits for the hospital. At the time of submission of completed designs to permitting agencies, the Applicant must post one or more surety or cash bonds in the amount estimated by its engineers (and approved by the Planning Board staff) that represent the cost of construction of such road improvements and other installations. Bonds must be posted with DOT or if DOT does not accept them, with the Planning Board on an interim basis to be released to the Applicant at such time as the permitting agencies accept bonds for equivalent purposes. Upon issuance of permits, the Applicant must proceed diligently with construction of the road improvements and other installation.

The Applicant must provide notice to Planning Board staff that final inspections for the use and occupancy permit have begun. Prior to the issuance of any use and occupancy permit for the hospital and/or any other on-site building, all road improvements and other installations must be substantially complete and open to traffic as determined by Planning Board staff.

- c. Prior to issuance of the building construction permit (including structural, electrical, plumbing, mechanical, etc. components) for the hospital and/or any other on-site building, the Applicant will be required to have obtained any necessary rights-of-way and/or easements, along with Executive Branch plans approval, and posted bonds for the construction drawings of improvements (including but not limited to intersection widenings, DOT-approved traffic signals, traffic control signs and markings, etc.) to be constructed within the public right-of-way.

Additionally, if any of the road improvements identified in these conditions either are now, or in the future become, obligations of other development projects, applicants of other development projects may participate on a pro-rata basis in the joint funding of such improvements. Basis of participation on a pro-rata basis is the sum of total peak hour trips generated by the subject development relevant to the particular improvement over the sum of total peak hour trips generated by all developments required by the Planning Board to participate in the construction of the particular improvement. The road improvements must include:

- i) At the Cherry Hill Road/Broad Birch Drive/Calverton Boulevard intersection:
 - Provide, along Cherry Hill Road, a southbound right-turn lane to westbound Broad Birch Drive.

- Provide, along Cherry Hill Road, a second northbound left-turn lane to westbound Broad Birch Drive.
 - Provide, along Broad Birch Drive, improvements that result in two eastbound left turn lanes to northbound Cherry Hill Road, a through lane to eastbound Calverton Boulevard, and a right-turn lane to southbound Cherry Hill Road.
 - Upgrade the existing traffic signal system at the intersection as necessary.
- ii) At the Cherry Hill Road/Plum Orchard Drive/Clover Patch Drive intersection:
- Provide, along Cherry Hill Road, a southbound right-turn lane to westbound Plum Orchard Drive.
 - Provide, along Cherry Hill Road, a second northbound left-turn lane to westbound Plum Orchard Drive.
 - Upgrade the existing traffic signal system at the intersection as necessary.
- iii) At the Broad Birch Drive/Plum Orchard Drive intersection:
- Provide a new traffic signal when warranted and approved by DOT.
 - Provide, along Broad Birch Drive, a separate eastbound right-turn lane to southbound Plum Orchard Drive.
 - Provide, along Broad Birch Drive, a separate westbound left-turn lane to southbound Plum Orchard Drive.
- iv) At the Tech Road/Broad Birch Drive intersection:
- Provide a new traffic signal when warranted and approved by DOT.
 - Reconfigure southbound Tech Road approach to Broad Birch Drive – from a through lane and a through-left lane to provide a through-left lane (to southbound Tech Road and eastbound Broad Birch Drive) and a left-turn lane (to eastbound Broad Birch Drive).
 - Reconfigure northbound Tech Road approach to Broad Birch Drive – from a through-right lane and a through lane to provide a right-turn lane (to eastbound Broad Birch Drive) and a through lane (to northbound Tech Road).
 - Reconfigure westbound Broad Birch Drive approach to Tech Road – from a right-turn lane and a left-turn lane to provide a right-turn lane (to northbound Tech Road) and a left-right lane (to southbound Tech Road and northbound Tech Road).
- v) At the Plum Orchard Drive/proposed Southern (Main) Hospital Entrance Driveway/Private Street A:
- Provide a new traffic signal when warranted and approved by DOT.

- Provide, along Plum Orchard Drive, a separate northbound left-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
 - Provide along Plum Orchard Drive, a separate southbound right-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
 - Provide, along the proposed hospital driveway, separate outbound right-turn and left-turn lanes (to southbound and northbound Plum Orchard Drive respectively).
- vi) At the Plum Orchard Drive/Proposed Northern Hospital Entrance Driveway:
- Provide, along Plum Orchard Drive, a separate northbound left-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
 - Provide, along Plum Orchard Drive, a separate southbound right-turn lane into the proposed hospital driveway if approved by DOT under the Signs and Markings Plan.
 - Provide, along the proposed hospital driveway, separate outbound right-turn and left-turn lanes (to southbound and northbound Plum Orchard Drive respectively).

The aforementioned lane use modifications are subject to DOT approval. If DOT finds the modification(s) is not appropriate when the applicant applies for the first building construction permit, the Applicant shall prepare a cost estimate for the measures necessary to implement the modification(s), for approval by DOT. Applicant shall pay DOT the approved amount(s); DOT will be responsible for implementing the modification(s) at such time as it determines them to be operationally appropriate.

Prior to approval of the roadway construction drawings, Applicant shall provide documentation acceptable to the Executive Branch review agencies that satisfactorily demonstrates the proposed intersection improvements will be adequate to accommodate the turning movements of WB-50 trucks and emergency response vehicles. The aforementioned intersection improvements may be expanded to accommodate these turning movement requirements.

If required as a result of Executive Branch approval of the roadway construction (and/or related Signs and Markings Plan), Applicant shall re-stripe Plum Orchard Road. Applicant shall also construct pedestrian refuge islands if approved under that review.

Applicant will be required to relocate any existing underground utilities, at its sole expense, if those utilities will be located within the proposed

widened roadway pavement or in conflict with the relocated enclosed storm drain system.

- d. Provide hospital-oriented employee shuttle(s) for main shift employees to and from the Metrorail system for a total of 10 years from the date the hospital opens to the public or until an earlier date if the Planning Board determines that area public transit service adequately meets the needs of these employees. The details of the shuttle operation (routes, locations, headways, etc.) must be determined at the time of Site Plan. Logistics related to the operation of the employee shuttle(s) must be in place prior to release of the first occupancy permit for the hospital and/or any other on-site building. The employee shuttle service must start operation at least a week prior to formal opening of the proposed hospital.
- e. The applicant shall submit a Memorandum of Understanding (MOU) to implement a Transportation Management Program (TMP) for the proposed hospital at the time of Site Plan. The applicant, the Maryland-National Capital Park and Planning Commission and the Department of Transportation shall each be signatory parties on the MOU for the TMP for this project. The MOU and the TMP must be finalized and entered into prior to the release of building permits for the proposed hospital and/or any other on-site building.

The TMP must designate a Transportation Coordinator at the hospital. The TMP must also include a periodic reporting mechanism such as a semi-annual performance review of the program by DOT or the Planning Board staff, as well as periodic reports to a Community Liaison Committee that may include members of the local community, area businesses and institutions, and Citizen Advisory Committees. In addition, the program must consider transit subsidies to employees, establishment of creative transportation accessibility options for employees, patients and visitors, installation of transportation/transit information display areas or kiosks in prominent locations throughout the hospital for employees, patients and visitors, and joint operation of local non-employee circulator shuttles in the area with other businesses/uses.

- f. Provide adequate internal connecting roadways, sidewalks, handicapped ramps and crosswalks to ensure safe and efficient vehicular/pedestrian connections. The applicant must submit a vehicular/non-vehicular circulation plan for the campus at the time of Site Plan for review by Transportation Planning staff, DOT, and the Montgomery County Department of Permitting Services (DPS).
- g. Construct a multi-bus pulloff facility(s) with canopy structure(s) in the vicinity of the hospital site. This is in lieu of the Planning Board's recommendations set forth in Section 5(g-j) of the Planning Board Recommendations for various bus shelters in the vicinity of the hospital. The location and conceptual design details for the facility(s) shall be resolved at the Site Plan

stage. To the extent the multi-bus pulloff facility(s) is not equivalent to the Planning Board's recommendations, the Applicant will provide additional bus shelters or other equivalent amenity. These equivalency issues will be resolved at the time of Site Plan.

- h. Provide, with approval from DOT, pedestrian countdown/APS signals at the Cherry Hill Road intersections with Broad Birch Drive/Calverton Boulevard and Plum Orchard Drive/Clover Patch Drive. The pedestrian countdown/APS signals must be installed at these intersections under permit in conjunction with the aforementioned intersection improvements. In the event the pedestrian countdown/APS signals are not approved by DOT, the applicant may substitute these with other available non-auto facilities of equivalent or greater mitigation value.
- i. Provide, with approval from DOT, pedestrian countdown/APS signals at the Plum Orchard Drive intersection with the proposed Southern Hospital Entrance Driveway/Private Street A (main hospital entrance) if the proposed traffic signal at this intersection is approved by DOT. The pedestrian countdown/APS signals must be installed at this intersection under permit in conjunction with the aforementioned intersection improvements. In the event the pedestrian countdown/APS signals are not approved by DOT, the applicant may substitute these with other available non-auto facilities of equivalent or greater mitigation value.
- j. Relocate any existing pedestrian countdown and accessible pedestrian signals, at Applicant's sole expense, as part of any widenings of existing signalized intersections. In the event the County has already installed pedestrian countdown and accessible pedestrian signals at intersection(s) required of the Applicant, the Applicant obtain necessary plan approvals and posted bonds to install such signals at other nearby signalized intersection(s) prior to issuance of the building construction permit (including structural, electrical, plumbing, mechanical, etc. components) for the hospital and/or any other on-site building.
- k. Prior to issuance of the building permit for the hospital and/or any other on-site building, Applicant shall pay the County \$40,000 for the future installation of two real-time transit information signs to be installed in the vicinity of the site. Applicant will be responsible for installing the necessary equipment, conduit, electrical connections, etc. to allow the County to install one real-time transit information sign each in the hospital and in the canopy structure once that program becomes operational. Applicant to grant necessary permission to allow County staff to access and maintain the real-time transit information sign, if one is installed within the hospital as proposed.
- l. Provide bike lockers and bike racks on the hospital campus as required by the Montgomery County Code. The bike locker and bike rack locations must be determined and finalized at the time of Site Plan.

6. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel to the extent that such evidence and representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.
7. Petitioner may employ approximately 2,000 employees to serve staffing requirements for approximately 1,300 full-time equivalent employees. Approximately 500 additional employees will work in the two medical office buildings ("MOBs") on the Campus.
8. Petitioner's hours of operation are 24 hours per day, seven days a week. Working hours for staff will be arranged in eight to ten different shifts, which shall be coordinated in the Transportation Management Plan to minimize traffic impacts, consistent with hospital needs.
9. The hospital campus must be developed in accordance with the final site, landscape, architectural, engineering and lighting plans submitted prior to closure of the record, unless changed at site plan review. This special exception is conditioned upon approval at site plan review. If the submitted plans and/or specifications for this project change at site plan review in any material way, Petitioner must timely apply to the Board of Appeals for an administrative modification of the special exception to substitute the revised plans and specifications.
10. All signs placed on the property must meet the requirements of Zoning Ordinance Article 59-F in terms of number, location, size and illumination, or appropriate variances obtained therefore. Sign permits must be obtained, and copies of those permits should be filed with the Board of Appeals prior to posting.
11. Petitioner shall maintain a log of helicopter flights to and from the hospital to insure that it is being used only for emergency purposes, which is the basis for its permitted use status under Zoning Ordinance §59-A-6.6. "Emergency" in this context shall be broadly construed to include all flights deemed medically necessary for individual patients. The log shall indicate at least the date and time of flight, the destination and origination points, the operator of the helicopter, and the reason for the flight (Patient names or identification numbers, if included, shall be handled so as to protect patient privacy rights). The log shall be made available for review by the Department of Permitting Services upon request.
12. Petitioner shall review the helicopter flight paths and determine which flight paths will minimize disturbance to the surrounding community. To the extent that the hospital has control over the flight paths used, it shall establish a preference, consistent with safety and operational concerns, for using the flight paths which minimize disturbance to the surrounding community. If Petitioner does not control the flight paths, then it shall consult with the appropriate controlling authority to encourage use of the flight paths which minimize disturbance to the surrounding community, without adversely impacting safety and operational considerations.

The results of Petitioner's review shall be submitted to the Board within six months after the relocated helipad becomes operational.

13. The requirement of Zoning Ordinance §59-E-1.3(a) that a parking facility be located within a 500-foot walking distance of the establishment served is waived so that the North Parking Garage may be located at a walking distance of up to 560 feet from the Main Building of the Hospital. Use of the North Parking Garage to access the Main Hospital Building should be restricted to hospital staff, in light of this waiver. This restriction does not apply to users of Medical Office Building 2 (MOB2), which is located practically adjacent to the North Parking Garage.
14. Petitioner must create a Community Liaison Committee (CLC) to discuss and address issues of concern to Petitioner and/or the community, especially those within sight and sound of the new property. The CLC may be established under the auspices of the Fairland Master Plan Citizens Advisory Committee, if that Group is amenable, or it may exist as an independent entity. The CLC shall consist of Petitioner's representative and representatives from the Fairland Master Plan Citizens Advisory Committee, the Calverton Citizens Association, Riderwood Village, West Farm Homeowners Association, Greater Colesville Citizens Association, Tamarac Triangle Citizens Association, Paint Branch/Powder Mill Estates Citizens Association, and any other nearby civic association or homeowners association wishing to participate. The People's Counsel will serve as an *ex officio* member of the CLC. The CLC is intended to provide a means and mechanism for communication and interaction between the hospital and its neighbors. The CLC must have an initial organizational meeting prior to the start of construction, and meet three times a year until construction is completed. Once the hospital is open to the public, the CLC must thereafter meet at least two times each year. Minutes of meetings must be taken and distributed, and the CLC must prepare an annual report to be submitted to the Board of Appeals. There will be no requirements for a quorum, voting, or specific attendance. Community groups must be invited and notified, but they may attend at their own election and based upon their own degree of interest.
15. 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.

On a motion by David K. Perdue, seconded by Catherine G. Titus, Vice-Chair, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, 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.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of October, 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.