

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. S-2751

PETITION OF VICTORY OAKS, INC.

OPINION OF THE BOARD

(Opinion Adopted April 21, 2010)

(Effective Date of Opinion: May 19, 2010)

Case No. S-2751 is an application for a special exception for Senior Housing under Section 59-G-2.35 of the Zoning Ordinance. The Hearing Examiner for Montgomery County held a hearing on the application on January 25, 2010, closed the record in the case on March 8, 2010, and on March 23, 2010, issued a Report and Recommendation for approval of the special exception.

The subject property is Lot N-070, Part of Parcel B, St. Camillus Church Property, located at 1500 St. Camillus Drive, Silver Spring, Maryland 20903 in the R-60 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 April 21, 2010. After careful consideration and review of the record in the case, the Board adopts the 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 representations of counsel identified in the Hearing Examiner's Report and Recommendation and the Opinion of the Board.

2. The development must be limited to a residential independent living facility for up to 49 senior adults and persons with disabilities or 48 senior adults and persons with disabilities and one resident staff member.
3. ADA access must be available between the senior housing facility and St. Camillus Church, as per the revised special exception plan (Exhibit 57(a)).
4. Petitioner must comply with the approved Preliminary Forest Conservation Plan and all applicable stormwater and sediment control regulations.
5. Petitioner must obtain a permit and variance for its planned sign, and must submit copies of these documents to the Board of Appeals prior to posting of the sign.
6. Petitioner shall obtain and maintain all appropriate licensing from Montgomery County and the State of Maryland for operation of an age-restricted, rental housing facility for independent seniors.
7. Petitioner shall construct, staff and operate this senior housing facility in accordance with all federal, state and local requirements.
8. Petitioner must comply with all applicable County noise standards. Petitioner must make reasonable efforts to obtain and install emergency generators with a maximum noise output suitable to meet the County standards, or, if infeasible, install acoustical treatment as necessary for compliance. Petitioner may conduct periodic non-emergency testing of the generator only during daytime hours (7:00 AM to 9:00 PM weekdays, 9:00 AM to 9:00 PM weekends and holidays). Garbage/dumpster pick-up shall comply with time of day restrictions specified in Chapter 48 ("Solid Waste Regulations") of the County Code (*i.e.*, no pick-ups between 9:00 PM and 7:00 AM on any weekday, or 9:00 PM and 9:00 AM on Sundays and federal holidays).
9. Petitioner is required to enter into a Limited License Agreement with the Board of Education of Montgomery County granting rights of ingress and egress over that portion of Beacon Road located within the boundaries of the Broad Acres Elementary School under terms and conditions established in said agreement. Such a Limited License Agreement must be signed and a copy delivered to the Board of Appeals prior to the issuance of any building permits in this case.
10. 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 Stanley B. Boyd, seconded by Walter S. Booth, with Carolyn J. Shawaker, David K. Perdue, Vice-Chair and Catherine G. Titus, 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.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 19th day of May, 2010.

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.

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.

