

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
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**Case No. S-2498**

**PETITION OF SONJA, HERBERT AND ALICE PRINCE  
AND PEARLINE WILLIAMS**

OPINION OF THE BOARD  
(Hearing Date: March 6, 2002)  
(Effective Date of Opinion: May 2, 2002)

Case No. S-2498 is an application for a special exception pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance to permit the: (1) increase in the existing number of residents from eight to ten; (2) increase of live-in staff to four family members; and (3) employment of two additional, non-resident family members to work Sundays from 6:30 a.m. to 5:30 p.m. Pursuant to Section 59-A-4.11 of the Montgomery County Zoning Ordinance, the Board of Appeals held a public hearing on the application on Wednesday, March 6, 2002.

Petitioners Sonja, Herbert and Alice Prince and Pearline Williams testified in support of the application. Michael Ma and Joel Gallihue of the Maryland National Capital Park and Planning Commission technical staff also testified. Martin Klauber, Esquire, Peoples' Counsel for Montgomery County appeared and made a statement in support of the application.

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The subject property is Lot 7A, Block 86, Petty Estate Subdivision, located at 7420 Maple Avenue, Takoma Park, Maryland, in the R-60 Zone.
2. The Applicants request special exception approval to operate an assisted living home for not more than ten ambulatory elderly residents. They also propose to live at the subject property.
3. The property has been used as a group home for elderly residents for at least 21 years and possibly longer. [Ex. Nos. 3, and 19]. On January 18, 1984, the Board of Appeals granted a special exception for a group home at the subject property which was in effect until 1988 when the use group home small, (up to eight residents) became a permitted use in the R-60 Zone, and the Board revoked the special exception on May 5, 1988. The Applicants purchased the property in September, 2000.
3. Neither the residents of the home, nor Mrs. Williams who will live on the top floor of the home and work as the cook, drive.
4. Residents have occasional visitors during the week, visits are usually arranged in advance, and rarely if ever, are there more than two visitors at a time.

5. There are five off-street parking spaces on the subject property. [Ex. Nos. 3, 6(d) & (e)].
6. Sonja Prince owns a car and Herbert and Alice Prince own a car. During the day, Sonja and Alice Prince work away from the home. Mr. Prince is available to assist residents during the day.
7. Two employees, who do not live at the home, work Monday through Friday 6:00 AM to 5:30 PM, and two part-time employees work Sundays from 6:30 AM to 5:30 PM and as needed when family members have other obligations.
8. The Applicants hold a current license from the Maryland Department of Health and Mental Hygiene to operate an assisted living home for eight residents. When the special exception is approved, they will change that license to allow 10 residents. [Ex. No. 15].
9. The house has thirty-three rooms [Exhibit No. 3]. The top floor, where Mrs. Williams would live, is a separate living unit, and the basement, where the Princes would live is also a separate unit. The residents live on the first floor and part of the second floor. Seven bedrooms are available for residents, on the main level and second level of the house. Three of these rooms have two beds. Kitchen facilities are available for residents on the main level of the house, and there are bathrooms on both the main level and second level [Exhibit Nos. 3, 4, 21(a) and 21(b)].
10. MNCPPC staff recommends approval of the application. Staff notes that the Takoma Park Master Plan "Support[s] some addition of elderly housing.." Staff also conducted a site visit and conferred with neighbors and representatives of the City of Takoma Park to confirm that the Applicants are operating the facility in a manner satisfactory to the neighborhood and consistent with the previous special exception. [Exhibit No. 19].

## **FINDINGS OF THE BOARD**

### **GENERAL STANDARDS**

#### **Sec. 59-G-1.2. Conditions for granting a special exception.**

*59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, 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 have 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 effects of a group home are the traffic, noise and physical activity associated with the residents and staff of the home. Because the residents of this home are ambulatory elderly residents who do not drive, there will be minimal impacts of this nature associated with their presence in the neighborhood. In addition, the fact that the special exception applicants will live at the property also serves to reduce the amount of traffic and activity associated with the proposed use. The Board finds no non-inherent adverse effects result from this proposal.

59-G-1.21. *General Conditions.*

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

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

Pursuant to Section 59-C-1.31(a) of the Zoning Ordinance, a group home is a permissible special exception in the R-60 Zone.

(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.*

As discussed in detail below, the Board finds that the requested special exception fully complies with the standards in Section 59-G-2.26 of the Zoning Ordinance.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any 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 granting 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 requested special exception is permitted in the R-60 Zone, and continues a longstanding residential use in a residential zone. MNCPPC staff notes that the Takoma Park Master Plan "Support[s] some addition of elderly housing if appropriate locations become available".

(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.*

There are no new structures proposed. Residents do not drive and will not generate significant physical activity or noise in the neighborhood.

(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.*

Evidence shows that the use has been in operation for at least twenty years and that nearby residents and City of Takoma Park officials are satisfied with the operation of the use.

(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.*

A group home for not more than ten ambulatory elderly residents will cause none of these adverse effects.

- (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 recommendation of a master or sector plan do not alter the nature of an area.*

The record contains no evidence of such an over-concentration of special exception uses.

- (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 of any adverse effects the use might have if established elsewhere in the zone.*

The subject property and house can safely and adequately accommodate ten residents and the use will have little impact on surrounding properties or residents.

- (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.*

The property is served by adequate 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.*

Not applicable.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

Not applicable.

- (b) *Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other authorization or approval required by law, nor does the Board's finding of facts regarding public facilities bind any other governmental agency or department responsible for making a determination relevant to the authorization, approval or licensing of the project.*

The applicants testified that they hold and will maintain all necessary licenses in connection with the special exception.

- (c) *The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.*

The Board finds that the Applicants have met the burden of proof in this case.

## SPECIFIC STANDARDS

### **Sec. 59-G-2.26. Group home.**

(a) **When allowed.** *In addition to the general conditions required in division 59-G-1, a group home may be allowed upon a finding by the board of appeals:*

(1) *That such use will not constitute a nuisance because of the number of residents, noise, vehicle traffic or parking, or any other type of physical activity.*

The Board finds that the use will have minimal impact on and cause no nuisance to surrounding properties. The elderly residents of the home do not drive and will not generate significant physical activity. The only vehicle traffic associated with residents will be occasional weekday visits. Family members who live in the home have a total of two cars, at least one of which is off-site during the day. And there are two day-time employees.

(2) *That the applicant must possess, not later than the issuance date of the use and occupancy certificate, any and all valid State of Maryland and County licenses, certificates, or registrations that may be required for a group home.*

The Applicants hold a current license from the Maryland Department of Health and Mental Hygiene to operate an assisted living home for eight residents. When the special exception is approved, they will change that license to allow 10 residents.

(3) *That any property to be used for a group home is of sufficient size to accommodate the proposed number of residents and staff.*

The Board finds that the thirty-three room home as described in paragraph 9 above, has ample room to accommodate all staff and the proposed ten residents.

(4) *That the site to be used as a group home for children provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children to be cared for.*

Not applicable.

(5) *That off-street parking must be provided in the amount of one parking space for every 2 residents and one space for every 2 employees on the larges work shift. The Board may decrease the off-street parking where the method of operation or clientele indicates the decrease is warranted.*

The Board finds that the five off-street parking spaces available on the property are sufficient. This is due largely to the fact that none of the elderly residents of the home drives. In addition, family members own just two cars, at least one of which is away from the home during the work day. Thus, the five spaces can accommodate the remaining family vehicle, daytime employee vehicles, and the maximum of two visitors at any given time.

Based upon the foregoing, the Board grants the requested special exception for a group home for ten residents subject to the following conditions:

1. The applicants shall be bound by their testimony and exhibits of record and the testimony of their witnesses, to the extent that such testimony and representations are identified in the Board's opinion granting the special exception.
2. The special exception for a group home is granted for a home for the ambulatory elderly only, not to exceed ten residents.
3. The special exception holders shall keep all required licenses current at all times.

On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Donna L. Barron, Louise L. Mayer 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.

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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 2<sup>nd</sup> day of May, 2002.

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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 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.