

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. CBA-1383-A

**PETITION OF TILDEN WOODS
RECREATION ASSOCIATION, INC.**

OPINION OF THE BOARD

(Opinion Adopted July 13, 2011)
(Effective Date of Opinion: July 21, 2011)

Case No. CBA-1383-A is an application by the Tilden Woods Recreation Association for a major modification of its community swimming pool special exception. The Hearing Examiner for Montgomery County held a public hearing on the application on May 6, 2011, closed the record in the case on June 3, 2011, and on June 24, 2011, issued a Report and Recommendation for approval in part and denial in part of the modification request.

The subject property is Lot B, Block 14, Tilden Woods Subdivision, located at 6806 Tilden Lane, Rockville, Maryland, 20852, in the R-90 Zone.

Decision of the Board: Special Exception Modification **Denied** as to the Request to host an annual 5K run. Special Exception Modification **Granted** as to the Proposed Changes to the Physical Facilities and Proposed Operations, Subject to the Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on July 13, 2011. The Board also had before it a request for Oral Argument, dated June 30, 2011, from Suzanne Keller, and a request for Oral Argument, dated July 1, 2011 from Soo Lee-Cho, on behalf of Tilden Woods Recreation Association. The Board finds that the record compiled by the Hearing Examiner is thorough and exhaustive, and that the Report and Recommendation contains clear and detailed conditions of approval. The Board

finds that no further argument is necessary for it to be able to render a decision on the application. The Board modifies proposed Condition 15 in the Report and Recommendation to provide that the required Community Liaison Committee minutes shall be filed annually by January 31, and with that slight change, adopts the Report and Recommendation, denies the request for an annual 5K race and grants the other physical and operational elements of the modification, 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, to the extent that such testimony and evidence is identified in the Hearing Examiner's Report and Recommendation and in this Opinion.
2. All terms and conditions of the approved special exception remain in full force and effect, except as modified in the Board's order granting portions of this modification request.
3. The membership of the community swimming pool is limited to 350 families and a maximum of 12 employees on the site at any one time.
4. The community swimming pool operating season may begin no earlier than on May 1st and must end no later than on September 30th in any given calendar year.
5. Hours of Operations are limited to:
 - a. Sunday – 11:00 a.m. to 9:00 p.m. and 9:00 a.m. to 9:00 p.m. Monday-Saturday. Six late nights of operation are permitted until 11:00 p.m., except as specified in subpart "e," below.
 - b. Early Morning Lap Swim for members of the pool only, Monday through Friday 7:00 a.m. to 8:00 a.m., which must be restricted to no more than 25 members.
 - c. Swim Team Weekday practice must begin no earlier than 8:30 a.m.
 - d. Swim Team early morning Advanced Swimmer warm-up for up to a maximum of 25 swimmers on a maximum of six (6) Saturdays, from 6:30 a.m. to 7:30 a.m., during the Swim Meet season.
 - e. One of the six late nights may be devoted to the annual all-night "lock-in." On that one night, the pool hours would be extended from 11:00 p.m. to 6:30 a.m., the following day. However, no amplified noise and no amplified music at all are permitted during the lock-in (*i.e.*, not even CD players, or the like); no diving board or volleyball is permitted after 9:00 p.m.; Children must be out of the pool by 10:00 p.m.; carpooling must be used to minimize traffic to the pool when the children

are picked up in the morning; and pick-up must be in the corner of the site farthest away from the neighbors. The impacts of the year's lock-in must be an annual topic at the mid-season meeting of the Community Liaison Council, with reference to it in the minutes filed with the Board, so that the Board can review whether Petitioner has kept adverse impacts to a minimum. The Board will retain jurisdiction and consider revocation of this permission if impacts become undue.

6. Swim Meets Hosted at the Pool are limited to:

- a. The maximum number of swim meets conducted at the site during the swim meet season must be limited to a maximum of eight (8).¹ A maximum of four meets (4) may occur on Saturdays, and a maximum of four (4) may occur on weekday evenings, within the approved hours of operation. In the event of a weather related delay, nothing in this condition is intended to preclude a scheduled meet from being re-scheduled or continued to a following day within the approved hours of operation.
- b. Except as provided in condition 5.d., above, general warm-ups for swimmers during Swim Meet season must begin no earlier than 7:30 a.m. on Saturdays.
- c. Petitioner may host a Time Meet on one (1) Saturday per the meet season within the approved hours of operation and a Mini-Meet on a weekday within the approved hours of operation. Petitioner must not host Divisional swim meets at the Pool.

7. The organized and neighborhood events may be allowed to continue in accordance with the limitations as specified in the amended Statement of Operations. The total number of organized events must not exceed ten (10) during the operating season and must avoid overlap with any swim meets. Certain "organized events" (*e.g.*, holiday socials/parties, adult parties) may include food service and/or alcohol service on site, with all required County permits obtained for said events by the Petitioner.

8. All operations must conform to the requirements of the Montgomery County Noise Control Ordinance (Chapter 31B of the County Code). Specifically,

¹ The elimination of divisional meets, as recommended by Technical Staff has reduced the number of total meets from nine to eight and the number of Saturday meets from five to four.

noise levels cannot exceed 65 dBA at the property line during daytime hours, and cannot exceed 55 dBA at the property line during nighttime hours. Daytime is defined as the hours between 7:00 a.m. to 9:00 p.m. weekdays and between 9:00 a.m. and 9:00 p.m. on weekends and holidays; nighttime is between 9:00 p.m. to 7:00 a.m. weekdays and between 9:00 p.m. and 9:00 a.m. weekends and holidays.

9. There must be no amplified noise (from any device) permitted before 9:00 a.m. or after 9:00 p.m. on the pool property except that the use of a standard swim meet starting system with a “buzzer” or “tone” in compliance with the Montgomery County Noise Ordinance is permitted to regulate swim meets.
10. The use of non-amplified acoustic instruments to play only the National Anthem at the start of a swim meet is allowed.
11. All lighting must be located, shielded and maintained so that no direct light or glare or reflection intrudes into adjacent and nearby residential properties. All internal and external lights must be turned off within 30 minutes of closing.
12. Petitioner must plant and maintain the landscaping and fencing required by the approved landscape plan (Exhibit 76(h)), except that the six new trees should be planted at an initial height of six to seven feet, rather than five to six feet as stated in the Landscape Plan. The grounds of the property must be properly maintained throughout the year. This includes removal of landscaping and lawn waste from the property, which must not be deposited in the adjoining park or properties.
13. Petitioner must comply with the specifications of the Special Exception Site Plan (Exhibit 76(f)) and the Lighting Plan (Exhibit 76(g)).
14. Petitioner must comply with the terms of its Statement of Operations (Appendix A to the Hearing Examiner’s Report and Recommendation) and Transportation Management Plan (Appendix B to the Hearing Examiner’s Report and Recommendation), but the conditions specified in the Board’s Resolution control in the event of any conflict. The Statement of Operations and the TMP must be posted at the pool in an area accessible to members, and the Statement of Operations and the TMP must be posted on Petitioner’s web site in a manner accessible to the public. The Board will retain jurisdiction to modify the Statement of Operations and the TMP as necessary should their current provisions prove inadequate.
15. Petitioner must create a Community Liaison Council (CLC) to discuss and address operating impacts and other issues of concern to the Petitioner and/or the community. The CLC shall consist of the Petitioner, the Petitioner’s representative and representatives from any civic association, homeowner association or resident within the defined neighborhood wishing to participate.

Petitioner's representative will also serve as a contact person for complaints by the neighbors, and therefore Petitioner must post the name and contact information for its representative on its web site. A record of any neighbor complaints must be filed with Board of Appeals on an annual basis. Meetings of the CLC must be held three times a year to be scheduled as follows: a meeting before the start of the operating season, a meeting during the operating season, and a meeting after the end of the operating season. Meeting minutes must be kept by the Petitioner and filed with the Board of Appeals (BOA) annually, no later than January 31.

16. 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 Carolyn J. Shawaker, seconded by Stanley B. Boyd, with David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair, in agreement, and Walter S. Booth necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the requests for oral argument are **denied**.

On a motion by David K. Perdue, Vice-Chair, seconded by Stanley B. Boyd, with Carolyn J. Shawaker and Catherine G. Titus, Chair, in agreement and Walter S. Booth necessarily absent, 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 21st day of July, 2011.

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.