

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
[www.montgomerycountymd.gov/boa/](http://www.montgomerycountymd.gov/boa/)  
(240) 777-6600**

**Case No. S-592  
PETITIONS OF WHEELER PROPERTIES, INC. AND  
QUALITY INN INTERNATIONAL, INC.**

**RESOLUTION TO MODIFY SPECIAL EXCEPTION**

(Resolution Adopted September 25, 2024)  
(Effective Date of Resolution: October 2, 2024)

The Board granted Case No. S-592, effective December 7, 1977, to Quality Inns International, Inc., to permit the construction of off-street parking in connection with a commercial use, in accordance with Section 59-161 of the Zoning Ordinance in effect at the time (Chap. 59, Mont. Co. Code 1972, as amended). The Board's 1977 decision states that the subject property was part of Parcel B, Burnt Mills Manor Subdivision, located at 10750 Columbia Pike in Silver Spring, Maryland, and that special exception Case Nos. CBA-1299 and CBA-2150 were previously granted for off-street parking in connection with this same use. Effective January 24, 1992, in Case Nos. CBA-2150 and S-592, captioned "Petitions of Wheeler Properties, Inc. and Quality Inn International, Inc.," the Board modified the special exception to permit additional parking.

Per the County's official Zoning Map and the submission requesting modification of this special exception, the subject property currently has an address of 10720 Columbia Pike, Silver Spring, Maryland, 20901, in the R-90 Zone, also known as Par E Burnt Mills Manor Subdivision.

The Board of Appeals received a letter dated September 4, 2024, from Moses Smiroldo, E.I.T., Project Engineer with Clark/Azar & Associates, requesting an administrative modification of this special exception to allow for the construction of a new generator and mechanical equipment at the Clearway Pain Solutions building at 10720 Columbia Pike in Silver Spring, Maryland. Mr. Smiroldo's letter states that the "proposed modifications include the construction of a new generator and generator pad within the existing parking garage on the southwest side of the building," and that "[i]n addition, two new mechanical equipment pads are proposed to be installed on the southwest side of the building adjacent to the existing generator." His letter states that the requested changes can be granted administratively because they "support the existing medical facility and will not change the nature, character or intensity of the permitted use and would not have an adverse effect on the surrounding neighborhood." Mr. Smiroldo's letter

indicates that the total limit of disturbance is 462 square feet. He includes a copy of the Site Plan showing the proposed work with his letter.

The Board of Appeals considered Mr. Smirolido's request at a Worksession held on September 25, 2024. Because Case No. S-592 was approved prior to October 30, 2014, under Section 59.7.7.1.B of the current Zoning Ordinance, this request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects otherwise. Section 59-G-1.3(c)(1) of the Zoning Ordinance (2004) provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds, based on Mr. Smirolido's letter and the attached Site Plan showing the location and scope of the proposed work, that the proposed equipment will serve an existing medical facility, and will be located in an existing parking garage or adjacent to that garage, between the garage and an existing medical building. The Board finds that the proposed equipment will be buffered from its surroundings by these structures and will not substantially change the nature, character, or intensity of the use, or its impact on traffic or the immediate neighborhood. Because of this, the Board finds that the requested modification to allow this equipment can be granted. Therefore, on a motion by John H. Pentecost, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Caryn Hines, and Amit Sharma in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that the record in Case No. S-592 is re-opened to receive Mr. Smirolido's letter of September 4, 2024, with attachment;

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that the requested modification, as described herein and in Mr. Smirolido's letter, and as shown on the Site Plan attached to that letter, is granted; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.

  
John H. Pentecost  
Chair, 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 October, 2024.

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**NOTE:**

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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. 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.

COUNTY BOARD OF APPEALS  
FOR  
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING  
100 MARYLAND AVENUE  
ROCKVILLE, MARYLAND 20850

Telephone  
Area Code 301  
270-226

Case No. 2150-A

PETITION OF QUALITY INNS, INC.  
for MODIFICATION OF SPECIAL EXCEPTION  
By: Scott T. Macomber

OPINION OF THE BOARD

Petitioner seeks to modify a special exception granted by this Board in April 1967 for its property, Parcel G, Block 4, Burnt Mills Manor Subdivision, at 10750 Columbia Pike, Silver Spring, Maryland, in an R-90 Zone. In granting the special exception we provided that a buffer zone around petitioner's parking area in a residential zone should be 35 feet wide along the western and northern edges of the property, from the line dividing lots 13 and 14 to and past lot 4, Block 4, of Burnt Mills Manor Subdivision. Petitioner has placed one of its two dumpsters in this buffer zone, at the rear of Lots 4 and 6 (Exhibit No. 9). The dumpster is enclosed by masonry walls and rather attractive wooden gates; this enclosure is 11 feet by 10½ feet, cost about \$2,200, and provides access on either side of the 7-foot wide dumpster so it may be filled efficiently. The enclosure intrudes into the buffer zone by 9.6 feet. Petitioner concedes the intrusion, but offered no explanation for it, and states that if its petition were denied, it would place the dumpster in the open on two parking spaces about 10 or 12 feet southeast of the enclosure, where it had been located before the enclosure was built.

Staff of the Planning Board recommended that the dumpster be located on the south side of petitioner's property, immediately adjacent to its other dumpster and abutting a Washington Suburban Sanitary Commission (non-residential) facility. Petitioner objected to this site because (a) it was farther from petitioner's north building than the current site and thus more inconvenient for use from that building, and (2) the parking lot lane providing head-on access for the truck picking up the dumpster is only 19 feet wide, and to service both dumpsters properly, several parking spaces would be eliminated. Petitioner also mentioned that rock on this side might cause substantial extra expense in constructing a larger enclosure.

Mr. John Thomas, president of the Burnt Mills Manor Civic Association, proposed several additional sites. He and other residents in the immediate vicinity testified that unpleasant noise emanated from the dumpster pickups, particularly noticeable early on Saturdays when residents were likely to sleep late. Residents also testified that noxious odors were a feature of the dumpsters. The residents also stated that the dumpster attracted rats and/or raccoons to the area.

We see no reason why the dumpster should not be sited as the Planning Board staff recommends. A dumpster is seven feet wide, so that an enclosure eleven feet square permits adequate access on both sides, and is doing so now. Three aisles of two feet each, plus two dumpsters, each seven feet wide, equals 20 feet. The additional foot or two needed for a straight head-on approach by the truck can readily be obtained by restricting to compact cars the nearest six parking spaces on each side of the nineteen foot wide parking lot aisle. Doubtless, other expedients are available, such as requiring dumpster pick-up prior to normal use of the parking lot (i.e., 8:00 o'clock a.m.).

Buffer areas such as the one petitioner has very substantially breached are required to visually screen off activities which are incompatible with residential use, for attenuation of noise and odors, and for similar purposes. The violation of such buffers leads to impairment of the value and peaceful use of neighboring properties, and thus impairs the foundation of the special exception, and perhaps requires its revocation. The evidence here indicates that such impairment has occurred. The breach is conceded and substantial, and we are required to rectify it. The petition must, accordingly, be denied.

Although it is not incumbent upon us to do so, we have suggested a site for the dumpster which would be appropriate. While we do not wish to limit petitioner's choice of a site to one alone, nonetheless, petitioner's choice of locating the dumpster about 12 feet from its existing location will violate the existing special exception (which does not permit location of a dumpster on the special exception property).


THEREFORE, BE IT RESOLVED that the requested modification be, and the same is hereby denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.

The foregoing Resolution was proposed by Harry M. Leet and concurred in by Doris Lipschitz, Chairman, Joseph E. O'Brien, Jr., and Thomas S. Israel. Richard E. Frederick was necessarily absent and did not participate in the foregoing Resolution.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 21st day of March, 1984.

  
Dollie H. Kyte  
Clerk to the Board

NOTE: Any decision by the County Board of Appeals may, within thirty 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.

COUNTY BOARD OF APPEALS  
FOR  
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING  
100 MARYLAND AVENUE  
ROCKVILLE, MARYLAND 20850

Telephone  
Area Code 301  
279-1226

Case No. 2150

PETITION OF WHEELER PROPERTIES, INC.

RESOLUTION TO SUSPEND RESOLUTION TO  
MODIFY THE SPECIAL EXCEPTION  
(Resolution adopted September 15, 1983)


The Board has received a letter from Murray Needelman, 10811 Wheeler Drive, Silver Spring, an adjoining owner of Lot 4 in Block 4 of Burnt Mills Manor, stating he is directly effected by the dumpster, and objecting to the Board's Resolution to amend the special exception concerning the location of the dumpster. Therefore, in accordance with the provision of Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance,

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the Resolution to modify the special exception entered in the Minute Book September 7, 1983, shall be, and hereby is suspended.

If the special exception holder wishes to pursue the requested amendment to the special exception, it will be necessary for the petitioner to complete the filing for an amendment. Upon receipt of the completed application (with appropriate filing fee), a public hearing will be scheduled.

The foregoing Resolution was proposed by Joseph E. O'Brien, Jr., Chairman, and concurred in by Rita Morgan, Doris Lipschitz, Harry M. Leet and Richard E. Frederick.

Entered in the Minute Book of the County  
Board of Appeals for Montgomery County  
this 21st day of September, 1983.

  
Dollie H. Kyte  
Clerk to the Board

COUNTY BOARD OF APPEALS  
FOR  
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING  
100 MARYLAND AVENUE  
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279-1226

Case No. 2150

PETITION OF WHEELER PROPERTIES, INC.

RESOLUTION TO AMEND  
CONDITION OF THE OPINION OF THE BOARD  
(Resolution adopted September 1, 1983)

The Board received a request dated July 29, 1983, from Larry A. Gordon, attorney for Quality Inns, Inc., for modification of Condition No. 1 of the Opinion of the Board in Case No. 2150 in the following manner:

"Quality Inns, Inc., the owner of the subject parcel situated approximately 200 feet west of U.S. Route 29 immediately north of the WSSC Filtration Plant on the Northwest Branch, hereby requests a modification of the buffer condition placed on said property upon the granting of Special Exception No. 2150 for off-street parking. This modification is sought in accordance with Section 59-G-1.3(c) of the Zoning Ordinance for Montgomery County.

"The buffer condition as set forth at page 2 of the April 4, 1967 Opinion of the Board in Case No. 2150 states as follows:

'1. A buffer zone, or distance between the rear property line and the beginning of the parking lot shall be maintained which shall be 35 feet running from the dividing line, between lots 13 and 14, northerly to the north end of the lot, then southeasterly to the commercial property. The buffer from the dividing line between lots 13 and 14 and the southernmost end of the parking lot shall be 25 feet.'

"Petitioner seeks to modify an 11-foot long portion of the 35-foot side buffer zone located immediately south of Lot 4, Block 4 of Burnt Mills Manor Sub-division. The extent of modification requested is a reduction of the buffer from 35 feet to 29 1/2 feet (i.e., a modification of 5 1/2 feet in width running for a distance of 11 feet).

"Petitioner recently constructed a wood enclosure for a garbage dumpster that encroaches 10 1/2 feet into the buffer zone. However, since the buffer at the point of encroachment is 40 feet wide, rather than the 35 feet required under the special exception condition, the actual violation extends only 5 1/2 feet into the required buffer.

"Petitioner maintains that the wooden structure is sufficiently screened and located so as to minimize any aesthetic, visual, health, safety or welfare impacts upon adjoining residential properties. Additionally, the structure and enclosed dumpster have been located at a point on the subject site that facilitates ease of trash removal.



"The structure has been carved into a steeply graded portion of the buffer zone, enclosed in a wooden enclosure, and landscaped. The slope of the grade is approximately 1 to 2. Additionally, the top of the buffer hill is visually screened from the backs of adjoining residential parcels by a stand of evergreen trees and a wood fence.

"The dimensions of the aforementioned wooden enclosure structure are as follows: 11' across, 6'9" high in front, 10'6" in depth and 1'6" high in back. As such, it fully encloses the trash dumpster.

"... Requiring that the wood structure and enclosed dumpster be modified or relocated would serve no beneficial purpose. The present location is highly suitable and compatible from the combined standpoints of accessibility, aesthetic amenity, health and safety. Furthermore, the existing structure could not be sufficiently modified in place so as to fully comply with the buffer condition. ..."

Upon consideration of the foregoing request, and upon careful review of the exhibits submitted, the Board is of the opinion that the modification can be granted without changing the nature, character, or intensify the use, and will not substantially change the effect on traffic or on the immediate neighborhood; therefore, pursuant to Section 59-G-1.3(c)(1) of the Zoning Ordinance,

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that Case No. 2150 shall be and hereby is reopened to accept the foregoing request for the record as Exhibit No. 30 and the attachments as follows:

Exhibit No. 31 - Current list of adjacent and confronting property owners

Exhibit No. 32 - Topographic sheet

Exhibit No. 33 - Elevations of wood structure

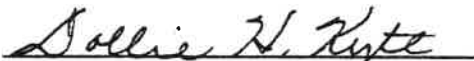
Exhibit No. 34 - Vicinity map

Exhibit No. 35 - Diagram depicting the location of the dumpster enclosure.

Additionally, BE IT RESOLVED that the request for the buffer zone to be reduced by 5 1/2 feet for the dumpster to remain as constructed is granted.

The foregoing Resolution was proposed by Joseph E. O'Brien, Jr., Chairman, and concurred in by Rita Morgan, Harry M. Leet and Richard E. Frederick. Doris Lipschitz did not participate in the foregoing Resolution.

Entered in the Minute Book of the  
County Board of Appeals this  
7th day of September, 1983.

  
Clerk to the Board

- (c) Modification. The board is authorized to amend or to modify the terms or conditions of a special exception upon the request of the special exception holder or upon the recommendation of the department, or pursuant to a show cause hearing as provided in section 59-G-1.3(e). (as corrected)
- (1) If the proposed modification is such that the terms and/or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without the necessity of convening a public hearing to consider the proposed change, may modify such term or condition. The affirmative vote of at least four members of the board shall be required to adopt a resolution to modify such terms and/or conditions.

A copy of the board's resolution shall be transmitted to the petitioner, the planning commission, the department of environmental protection, the department of finance, and to all parties entitled to notice at the time of the original filing. The notice shall state that any party may, within 15 days of the date of the board's resolution, request a public hearing on the particular action taken by the board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the board shall suspend its decision, ...

COUNTY BOARD OF APPEALS  
For  
MONTGOMERY COUNTY

Case No. 2150

PETITION OF WHEELER PROPERTIES, INC.  
REGARDING AN EXTENSION OF TIME  
(Hearing held April 3, 1969)

OPINION OF THE BOARD

This proceeding is on a request by Wheeler Properties, Inc., in accordance with Section 111-32. d. of the Zoning Ordinance (Chap. 111, Mont. Co. Code 1965, as amended) for an extension of time with regard to installing and establishing the use of the Special Exception granted in the above case on April 4, 1967. The subject property is recorded among the Land Records of Montgomery County, Maryland, in Liber 2566 at Folio 581, beginning at the southwest corner of Lot 16, Block 4, Burnt Mills Manor Subdivision, west of Columbia Pike (U.S. 29), Silver Spring, Maryland, in an R-90 Zone.

The Board was advised at the hearing on the instant request that due to the extreme topography and amount of earth to be removed, the petitioners have not been able to find a place for disposing all the dirt. In addition, the tight money market has created problems which has made it impossible to get started on the proposed project.

Testimony revealed that the physical condition of the property is such that it does not presently constitute a hazard or a nuisance in the neighborhood and there is no erosion problem. The required Condition No. 4 of the original grant has been implemented; trees and fence have been installed and are maintained.

Based on the testimony adduced at the hearing, the Board finds that the continuation of the subject property in its present condition for an additional 12-month period would not be detrimental to the use of adjoining properties and will not constitute a danger or a nuisance in the area.

Accordingly, an extension of time to establish use of the Special Exception is granted for a period of 12 months to terminate on the 15th day of April, 1970.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mr. Bernard D. Gladhill and concurred in by Mrs. Helen H. Burkart, Messrs. Calvin R. Sanders, Chairman, Kenneth E. denOuter and Ralph F. Berlow, constituting all the members of the Board.

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 15th day of April, 1969.



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Clerk to the Board

This opinion mailed to all persons who received notice of the hearing.

COUNTY BOARD OF APPEALS  
For  
MONTGOMERY COUNTY

Case No. 2150

PETITION OF WHEELER PROPERTIES, INC.  
(Hearings held January 26, & March 9, 1967)

OPINION OF THE BOARD

This proceeding is on a petition of Wheeler Properties, Inc. for a Special under Section 104-29. s. of the Zoning Ordinance (Chap. 104, Mont. Co. Code 1960, as amended) to permit off-street parking on approximately 2.983 acres of land located approximately 200 feet west of U. S. Route 29, immediately north of the Washington Suburban Sanitary Commission Filtration Plant, which is located on the Northwest Branch. The parking lot which was the subject of the proceedings before the Board is to be used in connection with a commercial use on existing commercially zoned land.

The evidence before the Board showed that U. S. Route 29 which runs in front of the property is a major four lane divided highway leading from Silver Spring northward where it eventually joins Route 40 to Baltimore. In front of the subject property, U. S. 29 is a major paved arterial highway carrying heavy volumes of traffic at all times. The entire parcel of ground of which a portion is the subject of this petition has a frontage on U. S. Route 29 of more than 1,000 feet. For a depth of approximately 200 feet from U. S. 29 the parcel is zoned C-2, and it is on this property that the applicant proposes to erect his commercial structures and to engage in commercial usage, all of which is permitted under the Zoning Ordinance. Adjoining the commercial ground to the rear is R-90 property owned by the applicant and this extends to the rear lot lines of single-family residences which front on an adjoining residential street. The applicant's property, the terrain and topography of which is exceedingly uneven rises steeply from U. S. Route 29, or Colesville Road, to the rear lot lines of the adjoining single-family residences which are more than 30 feet above the level of Colesville Road. The applicant introduced a site development plan showing in detail the proposed off-street parking together with lighting and fencing.

The petitioner introduced well-qualified and competent expert testimony to demonstrate that the proposed use would not create a nuisance because of traffic, noise or other conditions, nor would it adversely affect the use and development of the surrounding neighborhood. The applicant also demonstrated that no charges would be made to patrons using the off-street parking facilities nor would any services be rendered thereon, and a representative of the adjoining residential property owners appeared and testified that the proposed use would have a beneficial effect upon the surrounding neighborhood and would stabilize the use of this tract of land, all to the betterment of the adjoining single-family residences.

The Board has reviewed all of the evidence and testimony and is of the opinion that the petitioner has amply sustained his burden of proof and has demonstrated to the Board that all of the requirements of the Zoning Ordinance with respect to the grant of a special exception are met.

The Board, in accordance with the testimony, evidence and exhibits presented to it, imposes the following conditions to the grant of the special exception:



1. A buffer zone, or distance between the rear property line and the beginning of the parking lot shall be maintained which shall be 35 feet running from the dividing line, between lots 13 and 14, Northerly to the North end of the lot, then Southeasterly to the commercial property. The buffer from the dividing line between lots 13 and 14 and the Southern most end of the parking lot shall be 25 feet.
2. A solid split cedar fence shall be 6 feet 6 inches high and shall be erected 5 feet from the rear lot lines and on the property of Wheeler Properties, Inc., in the 35 foot buffer zone from the dividing line between lots 13 and 14 to the North end of the property, then Southeasterly to the commercial property, and shall be erected 3 feet from the property line Southerly from the dividing line between lots 13 and 14. This fence shall be maintained by Wheeler Properties, Inc., its successors or assigns. There shall be only two access exists to or from the parking lot, both of which will front on Colesville Road. The fence will be constructed along the entire length and width so as to enclose it on three sides and to prevent access from Burnt Mills Manor to the commercial property.
3. There shall be a grading slope from the base of the fence down to the floor of the parking lot. This slope shall be sodded or seeded with grass. The floor of the parking lot shall not be less than 10 feet below the grade at the dividing line between the property of Wheeler Properties, Inc., and the adjoining lots; and the current ground excavation level shall not be raised higher than the level which exists on March 1, 1967. The applicant may lower any portion of the floor of the parking facility at his discretion.
4. Trees shall be planted at 10 foot intervals along the entire length and width of the fence, between the rear line of the property and the fence. The minimum height of the trees at the time of planting will be 8 feet high. The trees will alternate white pine and red pine and will be replaced by applicant in the event of their failure for a period of two years from the date of planting. Applicant will be given access to property for purpose of planting and maintaining trees.
5. The grant for off-street parking shall exclude from the application the portion of the property marked "Parcel A" on the plat dated January, 1967, prepared by Thomas G. Oyster & Associates. The effect of said amendment will be that the said rear line of the parking facility shall run parallel to Colesville Road and not include any extension which would abut the rear lines of lots 15 and 16 in Block 4, thus reducing the parking spaces from the requested 251 to 201 spaces.

6. Lighting standards and other commercial lighting will comply with existing regulations, and, in addition, the parking facility lighting standards will not be higher than 8 feet from the floor of the parking facility and will be shaded or guarded so that lighting elements will not be visible from the residences fronting on Childs or Wheeler.

Subject to the foregoing conditions, the Board finds that the petitioner has met all of the relevant requirements of the Ordinance.

Accordingly, the special exception for the proposed use in the manner set forth in the testimony and exhibits is granted, with the time for this Special Exception to be extended for a period of 24 months from the date this Resolution is entered on the Minute Book of the County Board of Appeals.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mrs. Helen H. Burkart, and concurred in by Messrs. Charles R. Richey, Chairman, Bernard D. Gladhill and Kenneth E. denOuter. Mr. Calvin R. Sanders, Vice Chairman, did not participate in this decision.

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 4th day of April, 1967.

This opinion mailed to all persons who received notice of the hearing.

  
Clerk to the Board

COUNTY BOARD OF APPEALS  
For  
MONTGOMERY COUNTY

Case No. S-592

PETITION OF QUALITY INNS, INTERNATIONAL, INC.  
(Hearing held November 17, 1977)

OPINION OF THE BOARD

This is a petition filed for a special exception pursuant to Section 59-161 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1972, as amended) to permit the construction of 37 off-street parking spaces for use in connection with a commercial office building (C-2). The subject property is part of Parcel "B", Burnt Mills Manor Subdivision, at 10750 Columbia Pike, Silver Spring, Maryland, in an R-90 Zone. (Special exceptions B. A. 1299 and B. A. 2150 were granted previously for off-street parking in connection with this use.)

Decision of the Board: Special exception granted, subject to conditions enumerated herein.

The applicant requests a special exception to permit 37 off-street parking spaces, on land which is zoned R-90, in connection with an adjacent commercial use which is to be located on land which is zoned C-2. The property in question is located to the north of Unit No. 4 of the Northwest Branch Park, some 200 feet to the west of Columbia Pike, in the Burnt Mills area. The property is undeveloped and slopes in an easterly direction toward Columbia Pike. The property is bounded to the northwest by a parking area which is utilized in connection with a seven-story office building located along the west side of Columbia Pike. To the north, there are single-family residences located along Childs Street and Childs Court. To the south is a portion of Unit No. 4 of the Northwest Branch Park and a brick structure owned by Washington Suburban Sanitary Commission and currently utilized for office and maintenance purposes. To the immediate east of the property the land is undeveloped with the exception of an access road which serves the seven-story office building. This undeveloped parcel of land is zoned C-2 and will be the site of a five-story office building. The requested off-street parking which is the subject of this petition will be utilized in connection with this office building. The site would be developed according to plans entered in the record as Exhibit No. 16.

Prior to the hearing before the Board, the Maryland-National Capital Park and Planning Commission technical staff reviewed the subject petition and recommended approval, subject to the condition that six additional white pines of the same size and spacing be planted between existing trees that remain at the top of the cut slope to provide adequate screening of the adjacent



residential properties. Additionally, an agreement was entered into between the petitioner and the Burnt Mills Manor Civic Association. At the hearing before the Board the petitioner and Burnt Mills Manor Civic Association requested that the terms of the stipulations of the agreement (Exhibit No. 15) be made a part of the Board's decision. The terms of the agreement have been incorporated into the conditions of this decision.

The Board has reviewed the request for permission to construct off-street parking, and finds that the petition as conditioned herein meets all of the requirements of Section 59-123 and Section 59-161 of the Zoning Ordinance. It is therefore the decision of the Board of Appeals that the requested special exception be granted, conditioned upon the following:

1. The petitioner shall be bound by his testimony and exhibits of record.
2. The site shall be developed according to the approved site plan Exhibit No. 16. A buffer zone, or distance between the rear property line and the edge of the parking lot shall be maintained which shall be not less than 35 feet deep along the entire length of the parking lot.
3. The existing split cedar fence, 6 feet and 6 inches high, shall remain in its present position and shall be extended as shown on the site plan (Exhibit No. 16). This fence shall be maintained in good repair throughout its entire length by Quality Inns International, Inc., its successors and assigns, so as to prevent access from Burnt Mills Manor to the commercial property. There shall be only two access exits to or from the parking lot, both of which front on Colesville Road.
4. There shall be a graded slope from the base of the fence down to the level of the parking lot. This slope shall be protected by an appropriate ground cover such as Crownvetch. The level of the parking lot shall not be less than 10 feet below the grade at the dividing line between the property of petitioner and the adjoining lots, and the grade of the parking lot shall be substantially in accordance with the site plan except for grade changes resulting from the requirements subsequently imposed by any governmental authority.
5. At least six (6) additional evergreen trees at least 8 feet high at time of planting, shall be planted at 10 foot intervals between the existing trees to remain at the top of the cut slope and between the

rear line of the property and the fence. In those areas where existing trees are removed so that the natural screen at the rear of the property is diminished, trees shall be planted so as to provide complete screening of the adjacent residential properties. The trees shall be alternately white pine and red pine, and shall be replaced by applicant in the event of their failure for a period of two years from the date of planting. Petitioner shall be given access to property for purpose of planting and maintaining trees.

- 6. Lighting fixtures shall comply with existing regulations. The parking facility lighting standards shall not be higher than 8 feet from the floor of the parking facility and shall be shaded or guarded so that lighting elements will not be visible from adjacent residences. The lighting fixtures shall match the existing fixtures presently utilized on the existing parking areas.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mr. Sheldon P. Schuman and concurred in by Mrs. Marjorie H. Sonnenfeldt, Chairman, Mrs. Doris Lipschitz, Mrs. Shirley S. Lynne and Mr. Joseph E. O'Brien, Jr.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 7th day of December, 1977.

*Sollie H. Kyte*  
Clerk to the Board

NOTE: See Section 59-6.(c) of the Zoning Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

Section 59-122.(c) of the Montgomery County Zoning Ordinance 1972, as revised, requires that "On or before March 15 of each year, each applicant who has been granted a special exception shall file

with the Department of Environmental Protection a sworn certificate specifying current hours of operation, number of employees and occupants, equipment utilized, and stating that such operation is in all respects in full compliance with the terms and conditions imposed by the Board; provided, however, that the first such certificate shall not be filed unless and until at least twelve months have elapsed since the date of the grant of the special exception."