

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

**Case Nos. S-1464 and S-1465**

**PETITION OF MAPLEWOOD HOUSING PLACE LIMITED PARTNERSHIP,  
MAPLEWOOD PARK PLACE COOPERATIVE HOUSING CORPORATION, AND  
MAPLEWOOD PARK PLACE RETIREMENT SERVICES, INC.**

**RESOLUTION TO MODIFY SPECIAL EXCEPTION**

(Worksession Held May 9, 2018)

(Effective Date of Resolution: May 17, 2018)

The Board of Appeals granted Case Nos. S-1464 and S-1465, effective June 28, 1988, to Forum Lifecare, Inc. and C-I Mitchell & Best Company, to permit the construction and operation of housing for the elderly and a nursing home under Sections 59-G-2.35 (Housing and Related Facilities for the Elderly) and 59-G-2.37 (Nursing and Care Homes) of the Zoning Ordinance. Effective June 11, 1990, the Board granted two administrative modifications of this special exception, to allow a change in roofing material and a three-foot change in the finished elevation of the facility at ground level. Effective May 3, 1991, Forum Lifecare, Inc., was removed as a co-holder of the special exception. Effective July 22, 1994, the special exception was transferred to Maplewood Housing Place Limited Partnership, Maplewood Park Place Cooperative Housing Corporation, and Maplewood Park Place Retirement Services, Inc.

The subject property is located at 9707 Old Georgetown Road in Bethesda, Maryland 20814, in the RT-12.5 Zone.

The Board of Appeals has received a letter with attachments, dated April 30, 2018, from Allison L. Hardy, AIA, on behalf of the special exception holder, requesting an administrative modification of the special exception to permit enclosure of the existing balcony. In her letter, Ms. Hardy describes the proposed modification as follows:

1. Enclosure of the existing, 688 SF Main Dining Room balcony, Reference Drawings A-121 Lobby Demolition Plan and Photos and A-131 Lobby Construction

Plan Overall. The additional square footage will be utilized to expand the Main Dining Room. This enclosure shall be constructed on the existing balcony foundation. Therefore, no new foundation is required.

2. Reference Drawing A-231 Construction Building Elevations and Details. The single-story enclosure will be constructed with brick and decorative features to match the adjacent building and, importantly, will be compatible with the adjacent building's character.

3. We anticipate no adverse impact whatsoever on the surrounding neighborhood.

The Board of Appeals considered the modification request at its Worksession on May 9, 2018. Avon Wilson, the construction manager for the project, was present at the Worksession. Mr. Wilson explained to the Board that an exterior balcony was being enclosed to create space for the expansion of a formal dining room, and showed the Board the location of the balcony on the drawings submitted with the modification request.

Because Case Nos. S-1464 and S-1465 were approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects otherwise. Accordingly, Section 59-G-1.3(c)(1) of the Montgomery County 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 that the proposed modification, the enclosure of an existing balcony, will have no operational impact, and little, if any outward impact, and will therefore not substantially change the nature, character or intensity of the use and or its effect on traffic or on the immediate neighborhood. Therefore, on a motion by Katherine Freeman, seconded by Stanley B. Boyd, with John H. Pentecost, Chair, and Edwin S. Rosado, Vice Chair, in agreement, and with Bruce Goldensohn necessarily absent:

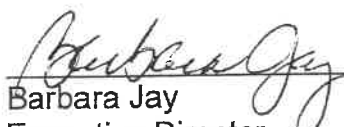
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the record in Case Nos. S-1464 and S-1465 is re-opened to receive the April 30, 2018, letter, with attachments, from Allison L. Hardy;

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception as specified above, in the April 30, 2018, letter, and on the large exhibits included with that letter, is granted;

**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 17th day of May, 2018.

  
\_\_\_\_\_  
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.

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217-6600

Case No. S-1464 and S-1465

**PETITIONS OF C-I/MITCHELL & BEST COMPANY**

RESOLUTION OF THE BOARD  
(Resolution adopted July 20, 1994)  
(Effective date of Resolution, July 22, 1994)

The Board is in receipt of correspondence dated July 15, 1994, from Robert L. Mitchell, President, which states, in part:

"On June 28, 1988, the Board of Appeals adopted a resolution that granted two Special Exceptions ... to (1) develop and build a Two Hundred and Forty (240) unit elderly housing facility and (2) operate a Sixty (60) bed nursing care facility. Upon completion, the referenced project will be owned and operated by the Maplewood Park Place Cooperative Housing Corporation and Maplewood Park Place Retirement Services, Inc. ...

"... On June 27, 1994, C-I/Mitchell & Best Company concluded a transaction whereby a new limited partnership was created, Maplewood Park Place Limited Partnership, whose purpose it is to develop and build Maplewood Park Place; simultaneously, the Partnership closed on a construction loan ... to build the facility. Actual construction of the Project began on June 20, 1994.

"The Partnership is comprised of two general partners, C-I/Mitchell & Best Company and Opus Management Corporation. ...

"... C-I/Mitchell & Best Company requests that the petitioner's name on the Special exception be changed to reflect the new Partnership and to include the name of the Cooperative and the Services Corporation as co-petitioners ... Therefore, we request that the Board of Appeals change the name of the petitioners on Case Nos. S-1464 and S-1465 to MAPLEWOOD HOUSING PLACE LIMITED PARTNERSHIP, MAPLEWOOD PARK PLACE COOPERATIVE HOUSING CORPORATION and MAPLEWOOD PARK PLACE RETIREMENT SERVICES, INC. ... this request is a minor modification pursuant to Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance ..."

Based on the foregoing information and upon review of the records of the above-referenced cases, the Board is of the opinion that a change of the names of the special exceptions holders, with operation continued in the same manner, will not be cause for a change in the nature, character or intensity

of the use of the property, nor will it change the effect on traffic or on the immediate neighborhood. THEREFORE, in accordance with the provisions of Section 59-G-1.2(c)(1) of the Zoning Ordinance.

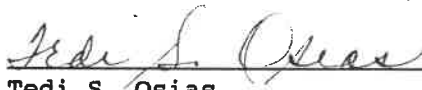
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case Nos. S-1464 and S-1465, shall be and hereby are re-opened to receive Robert L. Mitchell's July 15, 1994, letter and an updated list of adjoining and confronting property owners, the originals to be entered in the record of Case No. S-1464 and copies in Case No. S-1465; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to substitute Maplewood Park Place Limited Partnership, Maplewood Park Place Cooperative Housing Corporation and Maplewood Park Place Retirement Services, Inc. as the special exception holders in the above-referenced cases shall be and hereby is granted subject to all terms and conditions of the original special exception and any modifications thereto, and subject to the terms and conditions of the County and State Health regulations pertaining to nursing homes.

The subject property is Parcels C and D of the Bell Tract (Parcel 590), containing 8.2 acres, within the southeast quadrant of the intersection of Old Georgetown Road and the Capital Beltway (I-495), Bethesda, Maryland, in the RT-12.5 Zone.

The foregoing Resolution was proposed by Helen Strang and concurred in by K. Lindsay Raufaste, William Green, Allison Bryant and Judith B. Heimann, Chairman.

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland,  
this 22nd day of July, 1994.



Tedi S. Osias  
Executive Secretary to the Board

**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.

**CORRECTED RESOLUTION**  
**YEAR OF ADOPTION**

**CORRECTED RESOLUTION**  
**YEAR OF ADOPTION**

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"... On June 27, 1994, C-I/Mitchell & Best Company concluded a transaction whereby a new limited partnership was created, Maplewood Park Place Limited Partnership, whose purpose it is to develop and build Maplewood Park Place; simultaneously, the Partnership closed on a construction loan ... to build the facility. Actual construction of the Project began on June 20, 1994.

"The Partnership is comprised of two general partners, C-I/Mitchell & Best Company and Opus Management Corporation. ...

"... C-I/Mitchell & Best Company requests that the petitioner's name on the Special exception be changed to reflect the new Partnership and to include the name of the Cooperative and the Services Corporation as co-petitioners ... Therefore, we request that the Board of Appeals change the name of the petitioners on Case Nos. S-1464 and S-1465 to MAPLEWOOD HOUSING PLACE LIMITED PARTNERSHIP, MAPLEWOOD PARK PLACE COOPERATIVE HOUSING CORPORATION and MAPLEWOOD PARK PLACE RETIREMENT SERVICES, INC. ... this request is a minor modification pursuant to Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance ..."

Based on the foregoing information and upon review of the records of the above-referenced cases, the Board is of the opinion that a change of the names of the special exceptions holders, with operation continued in the same manner, will not be cause for a change in the nature, character or intensity

of the use of the property, nor will it change the effect on traffic or on the immediate neighborhood. THEREFORE, in accordance with the provisions of Section 59-G-1.2(c)(1) of the Zoning Ordinance.

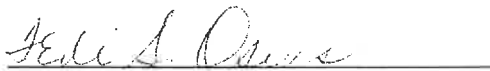
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case Nos. S-1464 and S-1465, shall be and hereby are re-opened to receive Robert L. Mitchell's July 15, 1994, letter and an updated list of adjoining and confronting property owners, the originals to be entered in the record of Case No. S-1464 and copies in Case No. S-1465; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to substitute Maplewood Park Place Limited Partnership, Maplewood Park Place Cooperative Housing Corporation and Maplewood Park Place Retirement Services, Inc. as the special exception holders in the above-referenced cases shall be and hereby is granted subject to all terms and conditions of the original special exception and any modifications thereto, and subject to the terms and conditions of the County and State Health regulations pertaining to nursing homes.

The subject property is Parcels C and D of the Bell Tract (Parcel 590), containing 8.2 acres, within the southeast quadrant of the intersection of Old Georgetown Road and the Capital Beltway (I-495), Bethesda, Maryland, in the RT-12.5 Zone.

The foregoing Resolution was proposed by Helen Strang and concurred in by K. Lindsay Raufaste, William Green, Allison Bryant and Judith B. Heimann, Chairman.

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Tedi S. Osias  
Executive Secretary to the Board

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Case No. S-1464 and S-1465

PETITIONS OF C-I/MITCHELL & BEST COMPANY

RESOLUTION OF THE BOARD  
(Resolution adopted July 20, 1993)  
(Effective date of Resolution, July 22, 1994)

The Board is in receipt of correspondence dated July 15, 1994, from Robert L. Mitchell, President, which states, in part:

"On June 28, 1994, the Board of Appeals adopted a resolution that granted two Special Exceptions ... to (1) develop and build a Two Hundred and Forty (240) unit elderly housing facility and (2) operate a Sixty (60) bed nursing care facility. Upon completion, the referenced project will be owned and operated by the Maplewood Park Place Cooperative Housing Corporation and Maplewood Park Place Retirement Services, Inc. ...

"... On June 27, 1994, C-I/Mitchell & Best Company concluded a transaction whereby a new limited partnership was created, Maplewood Park Place Limited Partnership, whose purpose it is to develop and build Maplewood Park Place; simultaneously, the Partnership closed on a construction loan ... to build the facility. Actual construction of the Project began on June 20, 1994.

"The Partnership is comprised of two general partners, C-I/Mitchell & Best Company and Opus Management Corporation. ...

"... C-I/Mitchell & Best Company requests that the petitioner's name on the Special exception be changed to reflect the new Partnership and to include the name of the Cooperative and the Services Corporation as co-petitioners ... Therefore, we request that the Board of Appeals change the name of the petitioners on Case Nos. S-1464 and S-1465 to MAPLEWOOD HOUSING PLACE LIMITED PARTNERSHIP, MAPLEWOOD PARK PLACE COOPERATIVE HOUSING CORPORATION and MAPLEWOOD PARK PLACE RETIREMENT SERVICES, INC. ... this request is a minor modification pursuant to Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance ..."

Based on the foregoing information and upon review of the records of the above-referenced cases, the Board is of the opinion that a change of the names of the special exceptions holders, with operation continued in the same manner, will not be cause for a change in the nature, character or intensity



of the use of the property, nor will it change the effect on traffic or on the immediate neighborhood. THEREFORE, in accordance with the provisions of Section 59-G-1.2(c)(1) of the Zoning Ordinance.


BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case Nos. S-1464 and S-1465, shall be and hereby are re-opened to receive Robert L. Mitchell's July 15, 1994, letter and an updated list of adjoining and confronting property owners, the originals to be entered in the record of Case No. S-1464 and copies in Case No. S-1465; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to substitute Maplewood Park Place Limited Partnership, Maplewood Park Place Cooperative Housing Corporation and Maplewood Park Place Retirement Services, Inc. as the special exception holders in the above-referenced cases shall be and hereby is granted subject to all terms and conditions of the original special exception and any modifications thereto, and subject to the terms and conditions of the County and State Health regulations pertaining to nursing homes.

The subject property is Parcels C and D of the Bell Tract (Parcel 590), containing 8.2 acres, within the southeast quadrant of the intersection of Old Georgetown Road and the Capital Beltway (I-495), Bethesda, Maryland, in the RT-12.5 Zone.

The foregoing Resolution was proposed by Helen Strang and concurred in by K. Lindsay Raufaste, William Green, Allison Bryant and Judith B. Heimann, Chairman.

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland,  
this 22nd day of July, 1994.

*for*   
Tedi S. Osias  
Executive Secretary to the Board

**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.

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Case Nos. S-1464 and S-1465

PETITIONS OF C-I/MITCHELL & BEST COMPANY

RESOLUTION TO EXTEND TIME TO IMPLEMENT SPECIAL EXCEPTION  
(Resolution adopted December 7, 1993)  
(Effective date of Resolution, April 13, 1994)

The Board is in receipt of a letter dated November 30, 1993, from Robert L. Mitchell, President, which states, in part:

"Pursuant to Section 59-A-4.53 of the Montgomery County Code, C-I/Mitchell & Best Company requests that the Board of Appeals extend the term of the above referenced Special Exceptions for an additional twelve (12) months. The Special exceptions will expire December 28, 1993.

"The terms of Section 59-A-4.53 require that a building permit be issued and that construction started on the project prior to the expiration date of the Special Exception. We are very close to meeting these requirements. We have applied for and received from Montgomery County Department of Environmental Protection (DEP) a Sediment Control Permit. ... We have begun the site work necessary to install the sediment control trap, a prerequisite to starting construction. We have applied to (DEP) for a Foundation Permit ...

"Our sales program is going very well. ... we have sold over ... 130 apartments. ...

"We are currently negotiating a construction loan ... As soon as we receive an approval to our loan application, we will begin construction on Maplewood Park Place. We have everything in place to start construction ...

"We are very close to meeting all the requirements of Section 59-A-4.53 ... However, ... we would feel more comfortable receiving a one year extension for Special Exceptions Nos. S-1464 and S-1465.

"We respectfully request an extension until December 28, 1994 of the two Special Exceptions, S-1464 and S-1465, granted to C-I/Mitchell & Best Company to develop both housing for the elderly as well as provide skilled nursing care for the residents of this facility. ..."

The Board, after careful consideration of the correspondence and a review of the record in Case Nos. S-1464 and S-1465, finds that the request to extend time to implement the special exceptions to permit construction of housing for the elderly and a nursing and care home can be granted without changing the original grant of the special exception and without the necessity of a public hearing. Therefore,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the records of Case Nos. S-1464 and S-1465, shall be, and hereby are re-opened to receive Mr. Mitchell's November 30, 1993, letter, as an exhibit of record, the original to be entered in Case No. S-1464 and a copy in Case No. S-1465; and

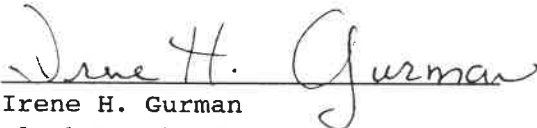
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the time for implementing the special exceptions granted in the above-referenced cases shall be and hereby is extended to the 28th day of December, 1995; and

All terms and conditions of the special exception granted the 28th day of December, 1993, and any modifications thereto, shall remain in full force and effect.

The subject property is Parcels C and D of the Bell Tract (Parcel 590), containing 8.2 acres, located within the southeast quadrant of the intersection of Old Georgetown Road and the Capital Beltway (I-270), Bethesda, Maryland, in the RT-12.5 Zone.

The foregoing Resolution was proposed by K. Lindsay Raufaste and concurred in by Howard Jenkins, Jr., Helen Strang, William Green and Judith Heimann, Chairman.

Entered in the Opinion Book of  
the Board of Appeals for  
Montgomery County, Maryland,  
this 13th day of April, 1994.

  
Irene H. Gurman  
Clerk to the Board

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.

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Case Nos. S-1464 and S-1465

PETITIONS OF C-I/MITCHELL & BEST COMPANY

RESOLUTION TO EXTEND TIME TO IMPLEMENT SPECIAL EXCEPTION

(Resolution adopted December 4, 1991)

The Board has received a letter dated November 25, 1991, from Robert L. Mitchell, President, C-I/Mitchell & Best Company, which states, in part:

"Pursuant to Section 59-A-4.53 of the Montgomery County Code, C-I/Mitchell & Best Company requests the Board of Appeals extend the term of the above-referenced Special Exceptions ...

"I. Background

"On June 28, 1988, the Board ... granted two Special Exceptions ... one for Housing and Related Facilities for Elderly Persons (S-1464) and the other for Nursing and Care Homes (S-1465). ...

"Under Maryland Law, the State Office of Aging strictly regulates the development, marketing and construction of lifecare facilities ... Marketing and acceptance of ten percent deposits for the purchase of independent living units may only begin after the State Office on Aging has issued a Preliminary Certificate of Registration. Construction ... may not begin until the developer can demonstrate that at least sixty five percent of the available units have been pre-sold to qualified buyers and ten percent deposits received. ...

"II. Current Status

"On September 20, 1991, C-I Mitchell & Best Company signed an agreement with the Marriott Corporation to market and manage Maplewood Park Place ... Since we signed that Agreement we have moved forward with an aggressive marketing program ... We have been working closely with the Office of Aging to provide them with the necessary updated documentation that they have requested regarding the project feasibility status. ...

"III. Projected Time Line

"Both Marriott as well as ourselves anticipate a successful marketing program. We believe that we will have seventy percent sales by the end of 1992.

"Once we have achieved seventy percent sales, we will be in a position to obtain construction financing as well as obtain a building permit in order to begin construction of the building. We anticipate an eighteen month construction time frame and occupancy of the building is expected to take place in late 1993 or early 1994.

"IV. Summary

"Due to the circumstances which have been described ... we have been unable to meet the time frame conditions of the prior extension of the two Special Exceptions. ... It is both our intent and commitment ... to complete this project as originally approved ...

"We respectfully request an extension ... of the two Special Exceptions ... to develop both housing for the elderly as well as provide skilled nursing care for the residents of this facility. ..."

After review of the record and the correspondence from Mr. Mitchell, the Board finds that a two-year extension of time can be granted to enable petitioner to construct Housing and Related Facilities for Elderly Persons (S-1464) and a Nursing and Care Home (S-1465). Therefore,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the record of Case Nos. S-1464 and S-1465, Petitions of C-I/Mitchell & Best Company, shall be, and hereby are re-opened to receive Mr. Mitchell's letter dated November 25, 1991 as an exhibit of record, the original to be entered in the record of Case No. S-1464 and a copy in Case No. S-1465; and


BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the time for implementing the special exception and any modifications thereto granted in Case Nos. S-1464 and S-1465, shall be and hereby are extended nunc pro tunc to the 28th day of December, 1993.

All terms and conditions of the special exceptions granted the 28th day of June, 1988, and any modifications thereto, shall remain in full force and effect.

The subject property is Parcels C and D of the Bell Tract (Parcel 590), containing 8.2 acres, within the southeast quadrant of the intersection of Old Georgetown Road and the Capital Beltway (I-495), Bethesda, Maryland, in the RT-12.5 Zone.

The foregoing Resolution was proposed by Helen Strang and concurred in by William Green, Howard Jenkins, Jr., K. Lindsay Raufaste and Judith Heimann, Chairman.

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland,  
this 14<sup>th</sup> day of January, 1992.

  
Irene H. Gurman  
Clerk to the Board

NOTE

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Case Nos. S-1464 and S-1465

PETITIONS OF FORUM LIFECARE, INC. AND C/I-MITCHELL & BEST COMPANY

RESOLUTION TO EXTEND TIME TO IMPLEMENT SPECIAL EXCEPTION  
and  
RESOLUTION TO MODIFY SPECIAL EXCEPTION  
(Resolution adopted May 2, 1990)

The Board has received a letter dated April 24, 1990, from John L. Hollingshead, petitioner's attorney, which states, in part:

"Our firm represents the applicants ... in connection with the referenced project. The project, known as Maplewood Park Place, is a lifecare facility consisting of 240 units of elderly housing and 60 nursing beds to be developed in Bethesda, Maryland.

"On behalf of the applicants, we hereby request that the Board ... extend the term of the special exceptions for an additional eighteen months and approve two minor modifications to the special exceptions allowing a change in the roofing material and a change in the finished elevation of the facility at ground level. ...

"I. Extension.

"The two special exceptions ... were granted on June 28, 1988. The period within which construction of the facility must be commenced currently expires June 28, 1990. The applicants' present request would extend this period by eighteen months, until December 28, 1991.

"... Under Maryland law, the State Office of Aging strictly regulates the development and marketing of lifecare facilities such as Maplewood Park Place. Construction of such a facility cannot be commenced until the owners have obtained a Final Certificate of Registration. ...

"When these special exceptions were issued, the applicants anticipated receiving their feasibility study approval and Provisional Certificate of Registration by January 1989 and beginning their presale efforts in February 1989. ...

"Once the Provisional Certificate of Registration has been issued, and presales can therefore begin, the applicants anticipate that approximately 12-18 months will be needed to presell the required sixty-five percent of the units and to apply for and obtain the Final Certificate of Registration. ... construction cannot begin until the Final Certificate of Registration has been issued. On the basis of this estimated time frame, the applicants believe that an additional eighteen months beyond the existing expiration date of June 1990 will be necessary before construction of Maplewood Park Place can commence.

"II. Modifications.

"The original design for Maplewood Park Place ... contemplated the use of a wood shingle roof. ... the applicants' architect has concluded that the use of wood shingles on a structure of this type is not permitted by the building code. The applicants therefore request that they be allowed to substitute a metal roofing material permitted by the building code in lieu of wood shingles. The applicants propose to use the color identified ... as "Wood Smoke" (or another manufacturer's equivalent), which is close to the roof color shown on the color renderings submitted with the original application. ...

"The applicants also request that they be allowed to lower the ground floor elevation of the structure by three feet from that contemplated in the original application. In the process of refining the design of the mechanical systems for this structure, the architect has determined that an additional one foot of space will be needed above the ceiling on three floors of the structure's perimeter, since only the points of entry would be lowered. The actual and apparent height of the structure would remain unchanged.

"... The applicants' submit that the requested changes to the roofing material and the ground floor elevation would have no impact whatsoever on the nature, character, or intensity of the proposed use, and would result in no change in the facility's effect on traffic or the immediate neighborhood. ..."

Based on the foregoing information, the Board finds that the request to extend the time to implement the special exception (to permit Housing and Related Facilities for the Elderly and a Nursing and Care Home) can be granted without changing the original grant of the special exception. The Board further finds that the requested modifications can be granted without changing the nature, character or intensity of the use of the property, nor changing the effect on the immediate neighborhood. Therefore,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the record of Case Nos. S-1464 and S-1465, shall be, and hereby are re-opened, with the following exhibits: Mr. Hollingshead letter; roof colors and finishes guide; and an updated list of adjoining and confronting property owners, and



BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the time for implementing special exception Case Nos. S-1464 and S-1465, Petitions of Forum Lifecare, Inc. and C/I-Mitchell & Best Company, shall be and hereby are extended to December 28, 1991; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that petitioner may substitute a metal roofing material permitted by the building code in lieu of wood shingles, the color being as close to the color shown on the color renderings submitted with the original application; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that petitioner may make a three-foot change in the finished elevation of the facility at ground level, as explained in Mr. Hollingshead's letter.

All terms and conditions of the special exceptions granted the 28th day of June, 1988, except as modified herein, shall remain in full force and effect.

The subject property is Parcels C and D of the Bell Tract (Parcel 590), containing 8.2 acres, within the southeast quadrant of the intersection of Old Georgetown Road and the Capital Beltway (I-495), Bethesda, Maryland, in the RT-12.5 Zone.

The foregoing Resolution was proposed by Howard Jenkins, Jr., and concurred in by K. Lindsay Raufaste, Helen R. Strang, William Green and Judith B. Heimann, Chairman,

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland,  
this 11th day of June, 1990.

  
Irene H. Gurman  
Clerk to the Board

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.



# Montgomery County Government

Case Nos. S- 1464 and S- 1465

PETITIONS OF FORUM LIFECARE, INC.  
and  
C-I/MITCHELL & BEST COMPANY

Upon the Board's own motion, the Board adopted the following Resolution:

The Opinion of the Board dated the 28th day of June, 1988, shall be corrected in the following manner: Page 9, First paragraph under NOTE, shall be corrected to read:

"The rights granted by the Board in this opinion must be exercised within twenty-four (24) months of the date that this opinion was entered into the Minute Book. ..."

The subject property contains approximately 8.2845 acres, known as proposed Parcels C and D of the Bell Tract (Parcel 590), located on Old Georgetown Road in the southeast quadrant of the intersection of Old Georgetown Road and I-495, Bethesda, Maryland, in the RT-12.5 Zone.

The foregoing Resolution was proposed by Judith B. Heimann, Chairman, and concurred in by Howard Jenkins, Jr., Max H. Novinsky, Helen R. Strang and K. Lindsay Raufaste.

Entered in the Minute Book of  
the County Board of Appeals for  
Montgomery County, Maryland,  
this 10th day of March, 1989.

  
Irene H. Gurman  
Clerk to the Board

County Board of Appeals

Stella B. Werner Council Office Building  
100 Maryland Avenue, Rockville, Maryland 20850, 301/217-6600, TTY 217-6505

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

Telephone Number: (301) 217-6600

Case Nos. S-1464 and S-1465

Petition of Forum Lifecare, Inc. and C-I Mitchell & Best Company  
Brought by Larry Laird  
(Hearing held April 25, 1988)

OPINION OF THE BOARD

Petitioners request two special exceptions so that they may build and operate housing for the elderly and a nursing home on the subject property. They bring this case pursuant to Section 59-G-1.11 of the Zoning Ordinance (Chap. 59, Mont. Co. Code, 1984, as amended), which grants the Board of Appeals authority to hear and decide this case.

Section 59-G-1.2 of the Zoning Ordinance generally governs special exceptions, and petitioners bring this case under the specific provisions of Section 59-G-2.35 (Housing and Related Facilities for the Elderly) and Section 59-G-2.37 (Nursing and Care Homes).

The subject property is Parcels C and D of the Bell Tract (Parcel 590), in an RE-12.5 Zone.

Decision of the Board: Requested special exceptions granted, subject to conditions.

Helen Strang, a member of the Board of Appeals, noted that she lives in the neighborhood affected by the proposed development and is a member of the Maplewood Citizens' Association. No party voiced an objection to her participation in this case.

The petitioners, Forum Lifecare, Inc. represented by Larry Laird, and C-I Mitchell & Best Company represented by Robert L. Mitchell, appeared and presented binding testimony and exhibits as follows:

The Applicants

C-I Mitchell and Best Company ("Mitchell and Best") currently owns a 16.5 acre tract of property, part of which is the subject of this opinion. Mitchell and Best is developing the east end of the property with 56 townhouses. Forum Lifecare, Inc. ("Forum") is the contract purchaser for the west

end of the property, an 8.2-acre tract that is the subject of the requested special exceptions. Forum will own and operate the residential and nursing facilities to be developed.

### Subject Property and Surrounding Uses

The subject property is an 8.2-acre tract within the southeast quadrant of the intersection of Old Georgetown Road and the Capital Beltway (I-495), Bethesda, in the RT-12.5 zone. The property is generally rectangular in shape, has a pan-handle extension to the east that extends 1,350 feet along the south side of the Capital Beltway and 290 feet along the east side of Old Georgetown Road. The east property line is the center line of a swale separating the subject property from the adjoining 56 townhouse development. To the south, the property adjoins the St. Jane de Chantal Church property.

A road from Old Georgetown Road travels east through the adjoining town-house development to Montgomery Drive. This roadway, approved as part of the adjacent Maplewood townhouse development, will provide access to the subject property. Old Georgetown Road in this vicinity consists of a six-lane, median-divided roadway with sidewalks.

Alfred S. Blumberg, accepted by the Board as an expert in land use and planning, testified that the proposed use is compatible and harmonious with the surrounding uses. He said that the subject property is surrounded by residential development that is peppered with various uses, including churches, hotels, day schools and a YMCA. Mr. Blumberg said that the project would not adversely affect the surrounding development because the facility will generate little noise, traffic or physical activity. Additionally, the facility will serve as a buffer to noise from the Beltway for the single family homes to the south. Mr. Blumberg also said that the proposed use will not cause an undesirable cumulative effect of special exceptions.

Mr. Blumberg testified that the proposed project would be located close to shopping centers, doctors and churches. Medical services and public transportation also are readily accessible from the site. (See Exhibit No. 14 - Land Planning & Design Report.)

Mr. Blumberg said that no exterior signage indicating the presence of retail stores will be on the site.

### Proposed Operation

The proposed facility, to be known as Maplewood Park, is a lifecare facility consisting of two components: 240 units of residential accommodations for persons 62 years of age or older, and 60 nursing beds.

Mr. Laird, President of Forum Lifecare, Inc., testified that there is a need for this type of elderly housing in Montgomery County. The project is targeted to accommodate the needs of "empty-nesters" who have built up equity in a home, but no longer need the space or want the upkeep of a house. This

project provides these people with a smaller residential unit, accompanied by a number of amenities as well as on-premises nursing care. Mr. Laird said that many elderly people are concerned about leaving their homes, their spouses and friends in the event of illness, and that this project addresses these concerns. Mr. Laird testified that Forum has found through experience that a lifecare facility typically markets to persons over 70 years of age with an annual retirement income in excess of \$25,000 in 1988 dollars. Although the minimum age requirement is 62, Mr. Laird said that the average age of the residents at their time of entry will be approximately 76-77 years of age.

Mr. Laird stated that Forum Lifecare proposes to build two residential sections (East and West wings) with approximately 240 residential units in a configuration of two crosses, five and six stories high, respectively, connected by a 1-story lobby and common activity area. The common activity area extends into and under each residential wing and includes a foyer, administrative office, living room, lounge, dining room, main kitchen, storage, arts and crafts room, activities room, guest room, beauty shop, country store, billiard room and multi-purpose room. The main entrance will be on the south side of the building at the central connection at the first floor elevation. The East Wing will be six stories high at the front entrance and will have residences on floors two through six. The West Wing is five stories high at the front entrance and will have residences on the upper four floors. In addition, each wing will have 14 residences on the first floor.

The nursing care facility will be located on the G-1 level in the East Wing, with the entrance at the northeast corner of the structure. This facility will contain 60 nursing beds and will include a small dining area and holding kitchen, patient lounge, nurses' station, employee lounge and utility areas. As a result of the topography of the site, the nursing care will be completely above grade.

Mr. Laird testified that during the initial years of Maplewood Park's operation, the nursing center will accept people who have not been residents of an apartment unit. Over time, however, he said that needs among the residents will generate a demand for essentially all the space in the nursing and personal care center, which eventually will serve only residents.

Mr. Laird testified that there will be a nursing staff on the premises 24 hours a day. He said that the housekeeping services would be on the premises from 7:00 a.m. to 5:00 p.m., and that the kitchen personnel would work between 6:00 a.m. and 8:00 p.m. Additionally, there will be a security guard on duty at night.

The Board accepted Jack C. Cohen as an expert in architecture. He explained that in response to Maryland-National Capital Park and Planning Commission's Staff and Board request the project has been modified by reducing the length of the southern area of the West wing for all levels above G-1 and providing a terrace over the G-1 level. Mr. Cohen

testified that the building design is traditional in character, with a wood shingle roof, arched pediments, and a number of bay windows, which allow more sunlight into the apartments than standard windows. Mr. Cohen said that the major exterior materials will be rose colored brick (to match the neighboring townhouses), case stone trim, aluminum windows, and wood shingles. Many of these architectural details are the same as those used in the adjoining townhouse development.

Mr. Cohen testified that the roofline will conceal rooftop mechanical systems. He also testified that the loading docks and the garage entrances and exits will be well screened from view by the topography of the property and by heavy landscaping.

Mr. Cohen explained that passive outdoor recreation amenities, including patios and sitting areas and a pedestrian promenade connecting the elderly housing facility with the adjacent townhouse development, will be protected from noise generated by the Capital Beltway and Old Georgetown Road.

Mr. Cohen said that the proposed building meets all of the Zoning Ordinance setback requirements and does not exceed the height limitation. He said that the proposed use is compatible with the surrounding neighborhood and is in harmony with the general character of the surrounding neighborhood. Mr. Cohen also said that, from an architectural standpoint, the facility will cause no objectionable physical activity and will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area. (See Exhibit No. 8 - Architecture and Design Report.)

### Residents

Residents will purchase their units for prices ranging, initially, from \$145,000 to \$295,000, depending on the size and design of the apartment. The resident or the resident's estate will be able to resell the unit to a person who meets the age and financial requirements of Forum. In addition to the purchase price, Forum will charge a monthly fee at rates ranging between \$895.00 - \$1,545.00 for the first occupant of each unit, and an additional fee of \$395.00 per month for a second occupant. These monthly fees include all general services such as social programs, transportation services, one meal per day in the dining room, and unlimited nursing care in the nursing center whenever necessary.

### Staff

The facility's staff will consist of professional nurses and nursing assistants responsible for providing care in the 60-bed health center; dietary personnel including cooks, food handlers, waitresses, and utility workers responsible for preparing and serving three meals a day in both the residential dining room and the nursing care center. Additional staff will include: operating engineers, maintenance workers, security personnel, housekeepers, a chaplain and an administrative staff responsible for the administration of the community.

Forum anticipates that the equivalent of 95-96 full-time staff members will serve the facility each day, seven days per week. Typically, two-thirds of these employees will work during the daylight hours, and the remaining one-third will work at night. Since some staff members will be students who will work part-time, the actual number of employees at the facility each day will be approximately 125. During the largest workshift, 51 staff members will be at the facility.

#### Parking

The garage entrance to parking is centrally located on the north side of the structure. There will be parking on each of the three lower levels, below grade. The garage will house a total of 230 parking spaces, of which 10 will be for the handicapped. In addition, there will be 36 standard surface spaces with space reserved for an additional 16 parking spaces if needed.

#### Water and Sewer

David O'Brien was accepted as an expert civil engineer. He testified that the proposed facility would be served by adequate water, sanitary sewer, and storm drainage, and that petitioners have addressed adequately stormwater management. He concluded that the proposed facility will not be detrimental to the use or peaceful enjoyment of surrounding properties or the general neighborhood, and will not adversely affect the health, safety, or general welfare of people in the area. (See Exhibit No. 10 - Engineering Report.)

#### Noise and Pollution Considerations

Ilene Straughan was accepted as an expert in environmental science. She testified that the proposed project will not have a detrimental impact on the surrounding neighborhood from noise, vibrations or air quality, including fumes, odors, dust and glare. She also testified that noise levels are low enough, and air quality is high enough, that the site can safely house elderly people in compliance with the requirements of the Zoning Ordinance. (See Exhibit 13 - Environmental Analysis Report.)

#### Traffic

The Board accepted Lee Cunningham as an expert traffic engineer. He testified that the proposed use will be in harmony with the general character of the neighborhood considering traffic and parking and will not be detrimental to the peaceful enjoyment, economic value, or development of surrounding properties of the neighborhood.

Mr. Cunningham noted that the applicants have proposed several traffic mitigation programs, including an on-site van for residential and employee use, as well as possible implementation of a "fare-share" program to encourage the use of

metro service. He did not take any of these mitigation programs into consideration when evaluating the traffic impact but based his analysis on the maximum traffic that could be anticipated.

Mr. Cunningham also testified that the public roads serving this project are safe for traffic and pedestrians.

The Transportation Planning Division of Maryland-Capital Park and Planning Commission (M-NCPPC) noted that the approved zoning for the subject parcel would allow for 100 townhouses. The Transportation Planning Division concluded that the number of trips generated by the proposed elderly housing and nursing facility use would be equal to or less than the amount of traffic generated by 100 townhouses. (See Exhibit No.37(b) - M-NCPPC Staff Report.)

The Transportation Planning Division noted that it reached this conclusion without considering either the impact of vans that the applicants propose to provide for the convenience of the residents or the positive impact of the bus service on Old Georgetown Road. Both of these factors would further decrease the traffic impact upon surrounding roadways. (See Exhibit No. 37(b) - M-NCPPC Staff Report.) The Transportation Planning Division recommended approval of the project based upon traffic considerations.

### Need

Joe Howell, a market analyst accepted by the Board as an expert in retirement and elderly housing, also testified about the need for elderly housing in Montgomery County. He said that there are no continuing care facilities in Montgomery County. He testified that there are an insufficient number of life care facilities in Montgomery County, that the project would not create a multiplicity of life care facilities in the area, and that the project would not be detrimental to the surrounding uses. (See Exhibit No. 9 - Market Feasibility Analysis.)

The Board received letters of support for the project from the Maryland office on Aging. (See Exhibit No. 20(a).)

### Impact on Surrounding Property Values

The Board accepted Ryland Mitchell as an expert real estate appraiser. Mr. Mitchell testified that elderly housing has no influence on a prospective homebuyer's decision to purchase a home and does not affect the amount of money that a purchaser is willing to spend. He testified that the proposed special exception will not be a detrimental influence on the value of surrounding property or the general neighborhood. (See Exhibit 11 - Property Value Report.)

### Maryland-National Capital Park and Planning Commission Staff and Board Reports

The M-NCPPC technical staff recommended approval with conditions. The staff found that the proposal conforms with



development standards for the special exception uses in the RT-12.5 zone, and that with the proposed conditions the use is compatible with the surrounding uses and will not result in an adverse impact upon the neighborhood.

The M-NCPPC Board also recommended approval with conditions (incorporated in this opinion). The M-NCPPC Board recommended that the petitioners remove 35 feet from the east building on the south wing to mitigate the impact of the building on surrounding neighbors. The applicants testified that they would comply with that condition of approval. The Board concluded that the special exception, as modified and subject to the conditions contained in this opinion, will be compatible with the surrounding neighborhood. (See Exhibit No. 37(a) - M-NCPPC Board Report.)

### Support

The Board received several letters in support of the petitioner's proposal from individuals. (See Exhibit Nos. 20(a) - (c) and Exhibit No. 67 - Letters of Support.)

### Opposition

Virginia Miller, from the Wyngate Citizens' Association, entered opposition to the project. She objected to the height of the proposed building. Michelle Ratcliffe, representing the Maplewood Citizens' Association, also appeared in opposition and testified that she thought the traffic impact would be greater than indicated in the traffic analysis. She also said that she thought the project would have a negative impact on property values. Ms. Cook appeared in opposition to the project, saying that she expected increased traffic, and that the ride-on bus service really is not convenient for the tenants.

Father John Scanlon, Pastor at St. Jane de Chantal Church, has expressed opposition to the project based upon the size and bulk of applicant's original proposal. Father Scanlon withdrew his opposition upon review of the final, modified plans. (See Exhibit No. 69 - Letter Withdrawing Opposition.)

The Board received several letters in opposition to the project from individuals.

### Findings of the Board

Based upon the petitioner's binding testimony and evidence of record, the Board finds, by a preponderance of the evidence that:

- (1) the proposed elderly housing and nursing care facility are permissible special exceptions within the relevant zone;
- (2) the proposed elderly housing and nursing care facility comply with the standards and requirements set forth in Sections 59-G-2.35 and 59-G-2.37 of the Zoning Ordinance;
- (3) the proposed elderly housing and nursing care facility will be consistent with the general plan for the physical development of the district, including any master plan adopted

by the commission;

(4) the proposed elderly housing and nursing care facility 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 the number of similar uses;

(5) the proposed elderly housing and nursing care facility will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity;

(6) the proposed elderly housing and nursing care facility will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area or to alter its predominantly residential character;

(7) the proposed elderly housing and nursing care facility will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

(8) the proposed elderly housing and nursing care facility will be served by adequate public services and facilities as required by Section 59-G-1.21(a)(8) of the Zoning Ordinance.

Additionally, the Board specifically finds that Montgomery County has a need for the proposed facilities. The Board also finds that the site has adequate accessibility to community services, as required by Section 59-G-2,35 of the Zoning Ordinance, and is reasonably well protected from excessive noise, air pollution, and other harmful physical influences. The Board finds that the proposed use will not produce adverse effects on the use or development of the surrounding area because of noise, traffic, type of physical activity, height or bulk of buildings, density, or any other reason, and finds that the use will be housed in a building architecturally compatible with other buildings in the surrounding neighborhood.

Accordingly, the requested special exceptions are granted, subject to the following conditions:

(1) Applicants shall be bound by all testimony and evidence in the record.

(2) Construction shall be in accordance with the plans in Exhibit Nos. 45, 51, 52, 53 and 55.

(3) The applicants may modify their internal design to increase the number of one-bedroom units, but there shall be no more than a total number of 240 units.

(4) Applicants shall submit a site plan review and approval by the Montgomery County Planning Board pursuant to Division 59-D-3 of the Zoning Ordinance to include landscaping, lighting and stormwater management.

(5) The preliminary plan of subdivision must be amended to address the different mix of uses and must provide revised traffic mitigation measures. The program shall include the hours and routes of delivery vehicles and the shift hours of employees.

(6) Applicants must receive final certification of registration by the Maryland office on Aging as a life care institution.

(7) Applicants must maintain a residential apartment of no more than 240 units and a 60-bed nursing care facility. Applicants must return to the Board of Appeals for a modification of these special exceptions if the number of nursing beds decreases.

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 Judith B. Heimann, Chairperson, and concurred in by Max H. Novinsky, Helen R. Strang, and K. Lindsay Raufaste. Howard Jenkins, Jr. did not participate in this Resolution.

I do hereby certify that the foregoing Minutes officially were entered in the Minute Book of the County Board of Appeals this 28<sup>th</sup> day of June, 1988.

  
\_\_\_\_\_  
Irene H. Gurman  
Clerk to the Board

NOTE: The rights granted by the Board in this opinion must be exercised within twelve months of the date that this opinion was entered into the Minute Book. See Section 59-A-4.53 of the Zoning Ordinance.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy permits.

Any party to this proceeding aggrieved by the Board's decision may file an appeal to the Circuit Court for Montgomery County. The aggrieved party must file an appeal within thirty (30) days after this decision is rendered, and must proceed in accordance with the Maryland Rules of Procedure.