

Via facsimile (301-424-9673) and USPS

January 31, 2011

Soo Lee-Cho, Esq.  
Miller, Miller & Canby  
200-B Monroe Street  
Rockville, MD 20850

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Ms. Lee-Cho,

Please provide the following by Monday, February 14, 2011:

Architectural drawings (including 3-dimensional renderings), elevations, specifications and other detailed information depicting fully the exterior appearance of the proposed construction of the new shade umbrellas, and any walls, fences and/or barriers to be installed and/or maintained around the shade umbrellas;

Architectural drawings (including 3-dimensional renderings), elevations, specifications and other detailed information depicting fully the exterior appearance of the proposed construction of the new pedestrian gate, pedestrian pathway, entrance gates and entrance fencing;

Architectural drawings (including 3-dimensional renderings) and specifications and other detailed information depicting fully the interior and exterior layout of the pool house;

Architectural drawings (including 3-dimensional renderings), elevations, specifications and other detailed information depicting fully the exterior appearance of any structures, such as tents, stadium seating/bleachers or other temporary structures contemplated in the operation of the site;

Detailed description of the starting device (with manufacturer name and model number and dimensions) and related equipment such as microphone(s), and proposed location and direction in operation of each on a copy of the site plan;

Detailed description of the speaker system, including speaker(s) dimension(s) (with manufacturer(s) and model number(s)) and related equipment such as microphones and sound mixing board, and proposed location and direction in operation of each on a copy of the site plan;

Cut sheets showing the various existing and proposed fixtures;

Soo Lee-Cho, Esq.  
January 31, 2011  
Page 2

A showing of financial responsibility; and

Certification/verification of the accuracy of the four sheets of Plans dated December 15, 2010 that were submitted with the Petition filed December 30, 2010, by the licensed architect of O'Neil & Manion Architects P.A. that prepared the Plans.

Sincerely,



B. J. Sadoff  
6804 Stonewood Terrace  
Rockville, MD 20852  
(T) 703-816-4091  
(F) 703-816-4100

cc:

Martin L. Grossman  
Director  
Office of Zoning and Administrative Hearings  
Montgomery County Board of Appeals  
Office of Zoning and Administrative Hearings  
100 Maryland Avenue  
Suite 200  
Rockville, MD 20850  
via email ([Martin.Grossman@montgomerycountymd.gov](mailto:Martin.Grossman@montgomerycountymd.gov)) & USPS

Carlton Gilbert  
Technical Staff - Development Review Division  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910  
via email ([Carlton.Gilbert@mncppc-mc.org](mailto:Carlton.Gilbert@mncppc-mc.org)) & USPS

Via email (Martin.Grossman@montgomerycountymd.gov) & USPS

B. J. Sadoff  
6804 Stonewood Terrace  
Rockville, MD 20852  
(T) 703-816-4091  
(F) 703-816-4100

February 28, 2011

Martin L. Grossman  
Director  
Office of Zoning and Administrative Hearings  
Montgomery County Board of Appeals  
Office of Zoning and Administrative Hearings  
100 Maryland Avenue  
Suite 200  
Rockville, MD 20850

Subject: Special Exception CBA-1383-A - Tilden Woods Recreation Assoc., Inc.

Mr. Grossman,

In view of your emails of January 14 and 20, 2011 and your Order of January 21, 2011, attached is a copy of an email dated February 17, 2011 from Mr. Carlton Gilbert of the M-NCPPC Technical Staff further detailing the schedule of the above at M-NCPPC. I understand from a telephone conversation of February 18, 2011 with Mr. Gilbert that this information has already been transmitted to your office.

Sincerely,



B. J. Sadoff

Attached - as noted above  
cc: (with attachment)

Mr. Carlton Gilbert  
Technical Staff - Development Review Division  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910  
via email ([Carlton.Gilbert@mncppc-mc.org](mailto:Carlton.Gilbert@mncppc-mc.org)) & USPS

Soo Lee-Cho, Esq. (via USPS)  
Miller, Miller & Canby  
200-B Monroe Street  
Rockville, MD 20850

**From:** Gilbert, Carlton  
**To:** B. J. Sadoff;  
**CC:** Yearwood, Nkosi; Etemadi, Shahriar; Axler, Ed; Findley, Steve;  
**Subject:** FW: S-1383-A Major Modification Special Exception Tilden Woods Community Swimming Pool  
**Date:** Thursday, February 17, 2011 12:58:11 PM  
**Attachments:**

---

Mr. Sadoff,  
Please note the following schedule for this case:

Public Hearing Date: 5/6/11  
Planning Board Date: 4/28/11  
Report posted on Web: 4/18/11  
Draft Report Completed: 4/11/11  
**Written Staff Comments due: 3/25/11**

As indicated in our meeting with you, staff has requested that the applicant provide additional information in order for staff to evaluate, provide analysis, and to develop a staff report (recommendation) in reference to the modification request. I have asked the applicant to provide this information by **March 4, 2011**. It would be helpful to staff, if you could provide your written narrative identifying your concerns and/or issues by **March 18, 2011**. As stated in our meeting, staff will be addressing the issues within the scope of the modification request. So, please try to focus on the issues specifically related to the modification request. The Planning Board will be looking to review the specific issues and concerns with regards to the modification request, and provide a recommendation to the Hearing Examiner accordingly. If you have additional questions, please let me know.

Thanks,  
Carlton

6807 Tilden Lane  
North Bethesda, Maryland 20852-4545

Mr. Carlton W. Gilbert, Planner Coordinator  
Build/Development Review Division  
Montgomery County Planning Department  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

March 4, 2011

RE: Case No. CBA-1383-A

Dear Mr. Gilbert:

The following comments are made in addition to those covered at the Special Exception Modification Meeting of February 11, 2011, in your office, and are in response to your deadline for comments by March 18, 2011.

It is our observation that the main issue of Case No. CBA-1383-A, now before Montgomery County officials, is defined by the single word "growth." We define growth as any activity or program that exceeds capacity or reasonable limitations. Capacity is the base from which growth may be measured or the standard by which it may be gauged. The capacity of the Tilden Woods pool is what existed in 1963 when the Tilden Woods Recreation Association (hereafter Association) was granted a special exception to construct and use pool facilities. Pool capacity as of 1963 included boundaries of the property, number of parking spaces, size of the single entrance-exit, definition of membership, maximum number of users, original purpose, and Montgomery County ordinances and other legal requirements. As a result of the inspection of June 23, 2009, there is agreement between and among all parties that the Association exceeded the capacity granted under the special exception permit of 1963, which we understand may be withdrawn under certain circumstances.

All parties will also agree that pool capacity has not remained static as evidenced by the inspection report and increased pool programs and activities. The question to be answered: Has pool growth exceeded pool capacity? Observing and measuring the magnitude of growth best answers this question. It is worth mentioning that growth is controlled within pool capacity by the Association and by the government of Montgomery County. Furthermore, growth beyond capacity may be authorized by either of these two parties, but such growth may be detrimental to Montgomery citizens in the area. Growth within capacity or outside of it may affect adjoining and confronting property owners, as well as other Tilden Woods neighbors. Excessive growth is that which spills over pool boundaries and adversely affects the neighborhood. Owners and

it enlists members outside of Tilden Woods apparently to increase revenue. When a certain number of outside members is reached, the original mission of the Association has changed. Has the number been reached? The membership issue has been made previously, but the Association's response was not convincing.

As already implied, the original purpose or mission of the Association is another starting point for measuring growth. Mission is the premier capacity term. It defines the limits of the Association. To significantly alter or exceed its mission is to say directly to its neighbors and the Montgomery County Government that the Association is no longer what it says it was in 1963. How might the Association have exceeded its original purpose? The answer is when programs and activities have exceeded the capacities mentioned above. The swim club is one good example, a worthy program, if it did not result in exceeding capacities. If it is true that the Association could not remain viable without the swim club, then the Association's mission has changed. And more, the trial balloon launched to Association members on February 24, 2009 (Proposed Year Round Facility) with architectural drawings of a two-story building is another indicator, one that first brought the pool issue to our attention. When the Association promotes a country club atmosphere on the property, it gives the appearance of having changed its mission. A case in point is the "An Evening in Capri" event of June 19, 2010, which included dinner, live auction, and advertising of available cocktails that we assume were not glasses of sparkling cider. Alcoholic beverages have no place on the property whose primary users are children and young people. Another egregious illustration of growth is the free-for-all management style that resulted in the violations cited in the inspection report. In other words, a management style without regard to the mission approved by Montgomery County and neighbors of Tilden Woods. It is our belief that the Association should not be rewarded for bad behavior that results in excessive capacity. Knowingly or unknowingly the Association has adopted a policy of incrementalism to obtain its goals. Mission creep is the result. Does this "creepy growth" have no limits in Montgomery County?

Why does its leadership want the Association to grow in ways that change its mission? In a word, "income." It appears the Association may no longer be able to support itself as a neighborhood swimming pool without income from other programs and activities. Maintenance costs and replacement of deteriorating facilities since 1963 have placed a heavy burden on the Association. These changes and conditions have not occurred in a vacuum. We can without sufficient information only guess as to why. Adults in Tilden Woods may decline membership because of the large number of children and teenagers using the pool. A true adult swim is a thing of the past. Parking is too much of a hassle. The presence up the street of the Montgomery Aquatic Center offers a more satisfying swimming experience. Parking at the Center is not a problem. Center facilities are obviously much better than those at the Tilden Woods Pool. It's a miniature version of having a Walmart in the neighborhood. The situation begs the question, why not close the Tilden Woods Pool and use the neighborhood Aquatic Center? Stated differently, the Aquatic Center is a factor contributing to the Tilden Woods Pool change of mission or possible demise. In the face of such challenges does the Association leadership have a well-defined, written strategic plan for financial

neighbors trust Montgomery officials to hear their complaints and make reasonable decisions without bias based upon facts gathered in a variety of ways. Without question officials decide cases within legal limitations, but their decisions are always open to further challenge.

Are there areas of growth that have exceeded capacity? Yes, there are. The previously mentioned inspection report evidences certain excesses, namely the five violations cited in the report. Growth since 1963 in pool memberships, visitors, and competitive programs has resulted in an insufficient number of parking spaces inside the pool property. The result is unacceptable spillover onto neighborhood streets, particularly on Tilden Lane and Old Stage Road. An increase in hours of operation since 1963 has resulted in more noise, more lights, and more traffic on Tilden Lane, as documented in files of Hearings. The one lane entrance to the pool has not changed since 1963 in spite of increased auto and service traffic. As a result only one auto or service vehicle may enter or leave the pool area at a time. Consequently, traffic backs up in both directions on Tilden Lane in front of our residence. We disagree with the thought expressed by certain individuals that in 1963 cars and service vehicles were smaller in width and length, and therefore modification of the entrance should not be expected. Lack of enforcement of parking and traffic on Tilden Lane is regrettable, as is the impression left by certain county officials that parking and traffic issues may not be dealt with currently because of technical language imposed by directives or the nature of Case No. CBA-1383-A. The above conditions are a direct result of pool activities exceeding pool capacity and should be addressed concurrently with other issues before approval of any modification of the existing special exception permit.

The swim club is a recent example of program growth, and it certainly was not contemplated in 1963. This program, as good as it is for youth, is the most invasive of the immediate neighborhood. It increases pedestrian, auto, and visitor traffic. The current impact of normal noise and amplified sound from the program is difficult to withstand, let alone the increase that would come with the Association's proposed increase in pool use hours. We strongly oppose any increase in hours for operation of the facility.

Growth of pool membership, as currently defined, is a subtle issue because of definitions used in the proposed Statement of Operations and because the bench mark for defining people growth also requires definitions of "pool user" and "total occupancy" for the entire operation. The 1963 permit allows for 350 family memberships based on certain zoning codes or ordinances having to do with the depth of the pool, etc. It may be that the number of 350 was agreed to because that was the number of family residences in the Tilden Woods community. The other classes and definitions of memberships in the Statement of Operations should not increase the total number of memberships, because the codes and ordinances are applicable and define capacity. The definition of memberships aside, the significant issue is the number of users in the pool at any one time, a mix of members and visitors. This number is also part of the equation for measuring occupancy. While the maximum number allowed in the pool may be posted, it would be well to show it in the Statement of Operations. Finally, the Association has admitted that

survival? Does one option of the survival plan include growing within 1963 capacities, and if not, why not? What alternative courses of action for growth have been considered or adopted. Is the planning realistic? Is the plan available for review by the residents of Tilden Woods? At what point in the process might Montgomery County require the Association to document its strategic and financial planning in order to determine if the Tilden Woods Pool can be sustained and if its mission is appropriate for the Tilden Woods community?

This said, what is to be made of the Association's requested changes and the County's responses? As implied above, the most important conflict is one over mission and all else are mere skirmishes. Only a few Tilden Wood neighbors and adjoining and confronting property owners have the time, energy, experience, and legal expertise to go tête-à-tête with government officials or study the details involved. Lack of involvement may be due to the fact that the devil is in the details. It may be true because skirmishes involve tickling technical details and calling it progress while the real issue of mission creep is overlooked.


Other involved neighbors are more competent than we are to address details time and time again as Case No. CBA-1383-A moves along to another conclusion. Never the less, with regard to the letter of February 15, 2011 from Miller, Miller & Canby to Martin L. Grossman that supplements the modification petition filed on December 30, 2010, we offer our opinions on a few of the details. The proposed replacement of the existing chain link gate/fencing with black metal at the front entrance of the type illustrated in Exhibit B would be a welcomed improvement. From our front yard, we desire to see as little of the pool facilities and the proposed colored umbrellas, beyond the gate/fence as possible, and we therefore recommend a six-foot black, metal fence with a dark black metal mesh or nylon mesh on the back of the fence. This improvement would be welcome especially during the nine months that the pool is not in operation. We further recommend that the top of the gate/fence not follow the contour of the land, but rather be level at the top of the fence. We further request that the Association address the issue of signage at the entrance to the pool and provide drawings of their proposed solution. We recommend only one sign that identifies the facility as "The Tilden Woods Pool" and that all other notices be located inside the pool area, perhaps on the inside of the gate/fencing, for viewing as patrons leave the pool area. Finally we ask is the fence set back from the Tilden Lane in compliance with County codes? We observe that the current fence is closer to the street than are those of Tilden Woods property owners.

We offer one more passing observation regarding parking. The Tilden Woods Park permits parking only for Park patrons who infrequently park on the streets for a big event. We recently photographed a half dozen parking violations on Tilden Lane when the pool was open and a Park event was underway. What objections are there to Park authorities allowing Pool patrons to use its parking lot for three months of the year? Park objections are likely to be the same as those of adjoining and confronting property owners of the pool. Yet, is there any Montgomery County office willing to mediate a solution between Park and Pool? Between Park, Pool and Residents?



We request that you carefully consider our concerns, not only about the details of Case No. 1383-A, but also the larger question of growth by the Tilden Woods Recreation Association, Inc.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Donald J. Evans and R. Esther Evans".

Donald J. Evans and R. Esther Evans

Cc. Martin L. Grossman  
Soo Lee-Cho  
Barbara Ship  
B. J. Sadoff  
Suzanne Keller

via USPS

March 7, 2011

Mr. Carlton Gilbert  
Technical Staff - Development Review Division  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Mr. Gilbert,

Thank you for your email of February 17, 2011 regarding the scheduling of the Planning Board Public Hearing<sup>1</sup> in the above on May 6, 2011, and for the meeting in your office on February 11, 2011<sup>2</sup>

Consideration of the entire record of Board of Appeals No. CBA-1383 (OZAH No. 10-17), in addition to the following will be appreciated. Specific consideration of previously submitted evidence, comments and background contained in the following will be appreciated: CBA-1383 Exhibit Nos. 17<sup>3</sup>, 18<sup>4</sup>, 20<sup>5</sup>, 21<sup>6</sup>, 24<sup>7</sup>, 29<sup>8</sup>, 33(a)<sup>9</sup>, 35<sup>10</sup>, 37<sup>11</sup>, 46(b)<sup>12</sup>, 47<sup>13</sup>, 56<sup>14</sup>, 66(a)<sup>15</sup>, 73<sup>16</sup>, 74<sup>17</sup>, 75<sup>18</sup>, 77<sup>19</sup>, 78<sup>20</sup>, 80<sup>21</sup>, 87<sup>22</sup>, and 98<sup>23</sup>.

<sup>1</sup> As noted in fn. 35 of CBA-1383 Exhibit No. 33(a), Francoise Carrier, now Planning Board Chair, of M-NCPPC, was (and possibly still is) a member of Tilden Woods Recreation Association (referred to herein as TWRA or Petitioner) and Ms. Carrier's children are believed to have been (and possibly still are) members of the TWRA swim team. Ms. Carrier is believed to have attended the 2009 annual meeting of the TWRA membership and to have been introduced by the then-President of the TWRA Board (Ross Dicker) as someone who could assist TWRA in understanding the zoning review process as TWRA moved forward with their expansion plans. Ms. Carrier was then Director of the Office of Zoning and Administrative Hearings (OZAH). See CBA-1383 Exhibit No. 75(p) ("New chief picked for Planning Board" The Washington Post, May 19, 2010). Ms. Carrier is believed to have offered some advice at the meeting regarding the zoning review process. Without wishing to question the integrity or impartiality of Ms. Carrier, the Planning Board, M-NCPPC, OZAH or the Board of Appeals, I again respectfully request that Ms. Carrier not be involved in the TWRA zoning review process in her official capacity as an employee of M-NCPPC or the County.

<sup>2</sup> Present at the meeting in addition to ourselves were Don Evans, Suzanne Keller, Nkosi Yearwood, Shahriar Etemadi, Ed Axler and Steve Findley. I provided you with a paper copy (including copies of the large exhibits) and three (3) CD copies of the record in Board of Appeals No. CBA-1383 during our meeting,

<sup>3</sup> June 1, 2009 DPS letter to Mr. Dicker.

<sup>4</sup> June 29, 2009 DPS Special Exception Inspection Report.

<sup>5</sup> July 7, 2009 letter from undersigned to Board of Appeals.

<sup>6</sup> July 8, 2009 letter from Ms. Keller to Board of Appeals.

<sup>7</sup> July 14, 2009 letter from the undersigned to Board of Appeals.

<sup>8</sup> December 7, 2009 letter from Ms. Keller to Board of Appeals.

<sup>9</sup> December 30, 2009 letter from undersigned to Board of Appeals with accompanying exhibits.

<sup>10</sup> January 5, 2010 letter from undersigned to Board of Appeals with accompanying exhibits.

<sup>11</sup> January 8, 2010 letter from Barbara Ship to Board of Appeals.

<sup>12</sup> April 19, 2010 letter from the undersigned to OZAH with accompanying exhibits.

Mr. Carlton Gilbert

March 7, 2011

Page 2

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

I understand from your email of February 17, 2011 that you have requested further information from the Petitioner by March 4, 2011, and any public comments by March 18, 2011, and that Technical Staff comments are due by March 25, 2011. I further understand from our subsequent teleconference of February 18, 2011 that this schedule was relayed to OZAH and that you are of the understanding that OZAH will notify the parties.

## Overview

Technical Staff consideration and recommendation of the herein-detailed Requested Conditions are solicited. Table 1 below provides, for your convenience, a comparison of the Requested Conditions with the Petitioner's conditions proposed in the Statement of Operations submitted as a part of the December 30, 2010 Petition.

The requested conditions are proposed to safeguard the general community interest and welfare<sup>24</sup>, protect nearby properties and the general neighborhood<sup>25</sup>, eliminate non-inherent adverse effects and minimize the impact of inherent adverse effects<sup>26</sup> of the Petitioner's current operations and proposed Statement of Operations. The requested conditions are also based on statutory requirements<sup>27</sup> and current uses not explicitly

---

<sup>13</sup> April 19, 2010 letter from Ms. Keller to OZAH.

<sup>14</sup> April 19, 2010 letter from Mr. and Mrs. Leonard P. Pliska to OZAH.

<sup>15</sup> April 25, 2010 letter from Joseph and Nancy Kogok to OZAH.

<sup>16</sup> May 3, 2010 letter from Michael Lungociu to OZAH with attachment.

<sup>17</sup> May 21, 2010 letter from Ms. Keller to OZAH.

<sup>18</sup> May 21, 2010 letter from the undersigned to OZAH.

<sup>19</sup> June 22, 2010 letter from the undersigned to OZAH.

<sup>20</sup> June 24, 2010 letter from Ms. Ship to OZAH.

<sup>21</sup> June 28, 2010 Hearing Examiner's Report (with transcript which was also provided to Technical Staff of M-NCPPC on February 11, 2011)..

<sup>22</sup> November 17, 2010 letter from Mr. Kogok to Board of Appeals.

<sup>23</sup> July 19, 2010 letter from the undersigned to OZAH with attached Exhibit Nos. 94 and 95..

<sup>24</sup> See for example, **Requested Conditions 1-3, 7, 8, 11 and 12** (Noise, Screening and Lighting, Fencing, Hours of Operation, Alcohol, Lighting, and Parking and Traffic) - § 59-G-2.56(d) of Montgomery County Zoning Ordinance (herein after the Zoning Ordinance).

<sup>25</sup> See for example, **Requested Conditions 1, 7 13 and 14** (Noise, Hours of Operation, Parking and traffic, and Neighborhood Liaison Committee) - § 59-G-1.22(a) of the Zoning Ordinance; **Requested Conditions 2, 3, and 12** (Screening and Landscaping, Fencing, and Lighting) - § 59-G-1.23(f)-(h) of the Zoning Ordinance; and **Requested Conditions 1-3, 12 and 13** (Noise, Screening and Landscaping, Fencing, Lighting, and Parking and traffic) - § 59-G-1.26 of the Zoning Ordinance.

<sup>26</sup> See § 59-G-1.2.1 of the Zoning Ordinance.

<sup>27</sup> See **Requested Condition 3** – Fencing - COMCOR § 51.00.01.03(B) (Fencing - section reproduced on pages 68-69 of CBA-1383 Exhibit No. 33(a)) and COMAR § 10.17.01.21 (Barriers - section reproduced on pages 69-70 of CBA-1383 Exhibit No. 33(a)) (as further explained herein, the Division of Licensure and Regulatory Services of Montgomery County Department of Health and Human Services has scheduled a March 1, 2010 site visit to inspect and measure the fencing for compliance); **Requested Condition 4** - Season of Operation - § 59-A-2.1 of Zoning Ordinance (Definition of "Seasonal site"); **Requested Conditions 5(a) and 5(b)** (Capacity of 428 persons and membership of 322 families) -

Mr. Carlton Gilbert

March 7, 2011

Page 3

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

provided for in the Petitioner's proposed Statement of Operations<sup>28</sup>. Moreover, the requested conditions are submitted with the hope that we can move beyond name calling<sup>29</sup>, accusations<sup>30,31</sup>, innuendo<sup>32</sup>, broken promises<sup>33</sup> and neglect<sup>34</sup>, to create a sustainable dialog built on transparency, honest communication and trust.

---

January 24, 2011 Letter of Kevin Chinnia, Manager, Public Health Services – Licensure and Regulatory Services (copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-97); and **Requested Conditions 5(c) and 5(d)** (Use of pool and property limited to members and their guests and not open to the general public) - § 59-A-2.1 of Zoning Ordinance (Definition of "Swimming pool, community")

<sup>28</sup> See for example, **Requested Condition 4** (Season of Operation) - page 142, lines 20-21 of the Transcript of April 30, 2010 (copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-112) (MS. BURGETT: "I just want to say the swim club is only open in the summer..."), CBA-1383 Exhibit No. 33(jj) (2009 Pool Schedule with "Opening Day" the Saturday before Memorial Day and Labor Day being the final scheduled day), CBA-1383 Exhibit No. 33(ee) (Meeting Minutes of renovation plans and specifically item 15 where a desire to expand to a year-round facility is detailed), 2006 Pool Schedule (copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-113) ("Opening Day" as the Saturday before Memorial Day and "Pool Closes September 4"), 2007 Letter from Mr. Dicker (TWRA President) to TWRA Members (copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-114) ("This summer, the pool season will run from noon on May 26<sup>th</sup> until September 3<sup>rd</sup>."), and 2001 Web cache (copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-116) ("Opening day May 26, 2001. Closing day Sept. 3, 2001."); **Requested Condition 5(c)** (guests must be accompanied by a member) - February 27, 2011 copy of TWRA web site (copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-117)) ("All guests must be accompanied by a TWRA member"); **Requested Conditions 7(d) and 7(e)** (Swim meets are limited to dual meets, prohibiting divisional swim meets) - Testimony of Ms. Ship (TWRA President), page 100, lines 13-21 of the Transcript of Board of Appeals Hearing of April 30, 2010 (copy attached as CBA-1383-A \_\_\_ (Exhibit BJS-112):

"Just as an aside, there are other A meets. There are other meets that we would host, but we're sort of too small a pool like divisionals and relay, I mean, just some of the other things that go with the swim league. We're too small a pool. We know we don't have the parking and the facility to be able to host those meets. So, we don't offer to do it and we haven't hosted those meets in many, many years because we know that it would have a negative impact on the community."

**Requested Conditions 8, 9 and 10** (alcoholic beverages are prohibited and the property shall not be operated as a food service facility or contain a basketball hoop) - Opinion of Petition of Regency Estates Swim Club, Inc. Case No. 2007 (July 19, 1966), (copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-118)) wherein the Board of Appeals indicates that authorization of a use is not granted unless requested ("In addition, since no request was made to permit the sale of soft drinks and other refreshments, no such authority was granted."). The principle expressed by the Board of Appeals in Regency Estates may reasonably be extended in this matter to other non-inherent uses such as sale of concessions, sale of merchandise, Talent shows and performances, showing of movies, amplified auctioneering, parties open to non-members, consumption of alcohol, and year-round operation, as well as the basketball hoop which has been removed from the facility and is not shown on the current Site Plan, for example.

<sup>29</sup> See CBA-1383 Exhibit No. 78 (July 24, 2010 Letter of Ms. Ship to OZAH referring to the undersigned as a "vigilante" and "self-appointed vigilante").

<sup>30</sup> See CBA-1383 Exhibit No. 78 (July 24, 2010 Letter of Ms. Ship to OZAH accusing the undersigned of (1) "taking unauthorized pictures of [TWRA members'] young children", (2) making complaints which are "frivolous, harassing and, in short, ... blatant effort[s] to 'wear down' the pool", (3) having a "personal vendetta" against the Petitioner, and (4) "acting as a 'policeman'"); and CBA-1383 Exhibit No. 66(d) (April 28, 2010 Letter of Alberto and Karen Belt to OZAH accusing "the Sadoff/Kellers [of having been unwilling] to negotiate in good faith with the pool").

Mr. Carlton Gilbert

March 7, 2011

Page 4

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

---

<sup>31</sup> The undersigned first heard the personal accusation regarding an alleged taking of unauthorized pictures of young children on January 13, 2010 outside the hearing room at the conclusion of the Board of Appeals Worksession when Karen Burgett (Board Member of TWRA) made the accusation to Ms. Keller. The undersigned advised the Petitioner's counsel by facsimile of January 13, 2010 that the accusation is false and baseless, and requested that this be relayed to the Petitioner. These are very serious accusations which the undersigned can not take lightly. If Ms. Ship's reference to "taking unauthorized pictures" is referring to copying images posted by TWRA on their publicly accessible web site for use as evidence in these proceedings, then the concerned TWRA members should take issue with the TWRA Board.

<sup>32</sup> See CBA-1383 Exhibit No. 36(b) (January 5, 2010 Letter of Michelle M. Powell to Board of Appeals "... it is a real shame that one neighbor with an obvious amount of too much time on their hands cast a negative cloud on our sunny day at the pool."); CBA-1383 Exhibit No. 33(ww) (July 15, 2009 email of Jill Epstein to TWST Families "Even though one's first reaction might be that of anger or to lash out at those who have contested us, this very reaction is what he is looking for to validate his claims ... I would not be surprised if he does not already have some type of surveillance in place ... We need to politely proceed on the hope that fair minds will be able to see through his volumes of claims ..."); and CBA-1383 Exhibit No. 36(b) (January 5, 2010 Letter of Ava Powell to Board of Appeals "My friends tell me that there is a person in the neighborhood that wants to shut down the pool ...").

<sup>33</sup> See for example, CBA-1383 Exhibit No. 87 (October 17, 2010 Letter of Mr. Kogok to Board of Appeals "...during the meeting in Martin Klauber's office, the Association agreed to remove the three trees. They admitted that they had not been "good neighbors" but that they intended to keep up with their responsibilities regarding the trees and landscape going forward. I accepted the word of the Association and thought that this was over. You will notice that I have sided with them in all of their issues before the Board, but did so with the understanding that they were going to remove the three trees and take care of the screening landscaping. Barbara Ship told me that they were just waiting for the weather "to break". That would have been this past spring. A couple of weeks ago Barbara Ship came to my house and told me that they were no longer going to remove the trees. She said that there were forestry laws and the Association would have to go through Park and Planning red tape and could no longer afford it. I feel as though I have been duped. When I asked her about trimming the bushes she said, "It's not exactly a hedge that we could just trim." It appears that they can afford maintenance in the entrance to the pool where everyone can see. My point is that there is no member of the pool board who would put up with what we have had to put up with in our yard for years. The pattern appears to be that they make promises, and later offer only excuses. I would ask that before any request is granted to the Tilden Woods Recreation Association that they be required to keep their previous commitments to remove the trees and restore the landscape.")

<sup>34</sup> See for example, CBA-1383 Exhibit No. 33(ii) (January 2008 Open Letter to All Members of the Tilden Woods Recreation Association from Concerned Members "long range financial planning has been neglected", "the current fencing is falling apart all around the property. The current fencing is also too low for proper security and poses a potential liability to TWRA. It is simply too easy to break into the pool."); CBA-1383 Exhibit 33(m) (August 11, 2009 Letter of Joe and Nancy Kogok to Barbara J. Piczak of DPS "For many years we have tried to get the pool to trim back the bushes which encroach onto our property and the evergreen tree branches which hang over our property. Several years ago the pool did take down one evergreen tree that appeared ready to fall (which was in line with and in sight of our backyard), but they only took it down as far as the top of the fence. They left about a 5 ft. tall stump to decay. This type of tree, especially now, at their age and condition, seems susceptible to damage, particularly limb breakage from wind storms. One of the large evergreens, the only one on the SW side of the pool's property facing the end of Stonewood Terrace, came down last summer. Luckily it fell onto pool and park property with only some damage to the chain link fence and to branches of deciduous trees on park property. It is unknown to us who finally removed the tree debris which remained on pool property outside the pool fence. Prior to this event, the last time we asked the pool to prune back the shrubbery, remove the trash, and tend to their trees which now hang over and come in very close contact with our attached carport, we were told that the pool did not have the financial capability to maintain this area of their

Mr. Carlton Gilbert

March 7, 2011

Page 5

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

---

property landscape. For as long as we can remember, it has actually been the M-NCPPC maintenance crew which has maintained the pool's SW corner property outside the fence, which faces Stonewood Terrace. The county cuts the grass and they remove downed limbs. Under the direction of a county tree specialist, they have trimmed up broken/weak branches from the tree which finally fell last summer."); CBA-1383 Exhibit No. 56 (April 19, 2010 letter from Mr. and Mrs. Leonard P. Pliska to OZAH "...within the past ten years or so we have witnessed excessive noise, increased traffic, and unresolved parking issues."); CBA-1383 Exhibit No. 87 (October 17, 2010 Letter of Mr. Kogok to Board of Appeals "The Tilden Woods Recreation Association has done little or nothing regarding maintaining the screening between the pool property and my home for at least fifteen years."); and Testimony of Mr. Dicker (TWRA President), page 13, line 2 through page 15, line 4 of the Transcript of Board of Appeals Worksession of July 8, 2009 (copy attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-115):

"MR. BOYD: In the letter it says you recently became aware of the 1963 special --

MR. DICKER: Yes.

MR. BOYD: -- assessment. So, you were not aware of this at all? And when you say recently, how recently?

MR. DICKER: Okay. I can speak to that, sir. This is my second stint on the Board. I was on the Board in 1990 for a few years. Because of an inspection that was done by Barbara Pizcak earlier, well, no, she sent us notice dated June 1st, but it wasn't picked up at the post office, and she hand-delivered it to the pool approximately a week and a half ago, and her letter contained a copy of this special exception that was issued in April of 1963, which you have referred to, which we referred to, which we put I think a copy went with our letter. That was the first time that the present board that I'm on was made aware of this special exception.

Previous boards apparently, again, well, we're all volunteers, not a paid staff, were not aware of it. My wife served on it for a number of years, she was never aware of it. And apparently -- well, we hired a group to study our facility, and in their coming up here and looking at things they found it but they didn't give me a copy of it. So, I first saw a copy of it about a week and a half ago, just before this letter came to you because we then realized that there is this 11:00 p.m., and we did not want to move ahead with anything in intentional violation.

So, there was a negligent violation for a number of years. I will be honest and tell you that, there was a negligent violation. I counseled the Board we cannot move ahead with an intentional violation, and that's why we filed this letter, and that's why we attached the exception to it, because we had learned of the cap on our evening activities.

MS. TITUS: Did you have a comment?

MS. SHAWAKER: Well, I note in the letter of Mr. Sadoff that he says the pool was advised by at least October 22nd, 2008 of the existence of this special exception.

MR. DICKER: Well, I would take -- that's what I'm saying, I received this at 9 o'clock this morning. I would disagree with that. I would disagree with that heartily. But as I said, we hired a group to give us advice on how to renovate, they came up here and it's obvious from their report they knew there was an exception, but I did not see in their report the body of the exception, and the body -- and the entire exception, opinion, whatever you call it, was handed to me by Ms. Pizcak approximately a week and a half ago. So, we knew there was an exception, we did not know the conditions. At least I as the President --

MS. SHAWAKER: And you felt no obligation to discover what conditions might have been attached? Just a question.

MR. DICKER: Yes.

MS. SHAWAKER: You can take it rhetorical."

Mr. Carlton Gilbert

March 7, 2011

Page 6

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Technical Staff recommendation of the following Requested Conditions is requested.

Mr. Carlton Gilbert

March 7, 2011

Page 7

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

## **Requested Conditions**

### **1. Noise**

1(a). No amplified music or other amplified sound, noisemakers horns, drums or other musical instruments shall be used on the pool property except for the Permitted Amplification Devices described herein.

### **2. Screening and Landscaping**

2(a). Generally - Install and maintain year-round screening of pool and property from neighbors by planting and maintaining tight or compact, evergreen (such as arborvitea as may be recommended by the Technical Staff of M-NCPPC) hedge, planted 3 to 4 feet on-center and at least 7-8 feet in height at the time of planting.

2(b). South-west corner - Install and maintain 30-40 arborvitea, at least 7-8 feet high at time of planting, to create a tight or compact, evergreen hedge for year-round screening, inside the property fence, on an approximate line of the 120 feet from the south-west corner of the sand volleyball court to the south-west corner of the pool deck surrounding the Tot Pool.

2(c). Western border - Remove remaining three (3) white pines on western border of property and replace and maintain row of arborvitea inside the property fence on the western border of the property in a manner similar to the proposed landscape plan of December 21, 2009 of sufficient number to create a tight or compact, evergreen hedge for year-round screening of at least 6 feet as measured from the elevation of the sand volleyball court .

2(d). Northern border - Remove remaining white pines on northern border of property, and replace and maintain, on pool property, row of sufficient number of arborvitea or other evergreens to create tight or compact, evergreen hedge for year-round screening.

2(e). Maintenance - Landscaping and lawn waste is to be removed from the property and not deposited in the adjoining park or properties. The buildings and grounds of the property shall be maintained throughout the year including the collection and off-site disposal or any trash, debris, leaves and clippings and the removal of snow and ice and/or debris from the property's public sidewalks.

### **3. Fencing**

3(a). Replace and maintain fence around pool property to not be less than 72 inches in height, measured on the outside, and 42 inches in height, measured on the inside, designed so as to minimize the possibility of unauthorized or unwary persons entering the pool area.



Mr. Carlton Gilbert

March 7, 2011

Page 8

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

## **Requested Conditions**

### **4. Season of Operation**

4(a). The pool and property may be open to members and guests for the swim season from the Saturday before Memorial Day to Labor Day and the pool and property will be closed to members and guests from Labor Day to the Saturday before Memorial Day.

### **5. Capacity and membership**

5(a). The capacity of the pool is 428 persons. At no time will there be more than 428 persons occupying the pool and property.

5(b). Membership of Tilden Woods Recreation Association (TWRA) is limited to 322 families, as defined by controlling County or State law or regulation.

5(c). Use of the pool and property is limited to members and guests. Guests must be accompanied by a member. The pool and property are for the exclusive use of bonded members and their guests.

5(d). The pool and property is not open to the general public for any reason at any time.

### **6. Employees**

6(a). The maximum number of employees (i.e., manager, assistant manager, maintenance, lifeguards, coaches, etc.) on the pool property at any one time shall not exceed twelve (12). Pool employees may enter the pool property no earlier than 30 minutes prior to the hours of operation and may remain on the property no more than 30 minutes after the hours of operation.

### **7. Hours of Operation.**

7(a). Membership General Hours - prior to close of MCPS - Prior to the close of Montgomery County Public Schools (MCPS) for the summer, the pool and property may be open from 1 pm through 9 pm. Pool employees may remain on the property for no more than 30 minutes after closing.

7(b). Membership General Hours - after close of MCPS - After the close of Montgomery County Public Schools (MCPS) for the summer, the pool and property may be open from 9 am to 9 pm. Swim team members may enter the pool property no earlier than 8:30 am for swim team practice during the week, on Monday through Friday.

Mr. Carlton Gilbert

March 7, 2011

Page 9

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

### **Requested Conditions**

7(c). Early swim - The pool and property may be open for no more than 18 swimmers and 21 cars from 7 am to 8 am, Monday through Friday, for lap swimming by members of the pool. Cars must park in one of the 21 parking spaces on the eastern side of the parking lot. The lap swimming is not available to swim team members, swim lessons or commercial use. A minimum of two (2) and maximum of three (3) employees may be present during this time.

7(d). Saturday MCSL swim team meets at TWRA - The pool and property may be open three (3) Saturdays a season for Montgomery County Swim League (MCSL) - A - swim team, dual meets and one (1) Saturday a season for a Time Trial meet at the pool property no earlier than 8 am to members of the participating swim teams for swimmer warm up. Meets are to not start before 9 am. Neither the starting device nor the public address system is to be used prior to the start of the meets.

7(e). Mid-week MCSL swim team meets at TWRA - The pool may conduct three (3) Wednesday evening MCSL - B - swim team, dual meets until 9:00 pm.

7(f). Social Events - The pool and property may be open until 11 pm no more than six (6) late nights during the season, after the close of MCPS. Members, guests and employees must exit the pool and property, and all lights must be turned off, no later than 11 pm on such nights.

7(g). Maintenance Activities - The pool and property may be open to contractors for lawn, landscaping and other maintenance, deliveries and trash removal. Maintenance may only be conducted between 8 am and 7 pm Monday through Friday and between 9 am and 7 pm on Saturday and Sunday.

### **8. Alcohol**

8(a). The transportation to and consumption upon the property of alcoholic beverages of any kind are prohibited.

### **9. Food Service**

9(a). The property shall not be used or operated as a food service facility.

### **10. Sporting Activity**

10(a). The property shall not contain a basketball hoop.

### **11. Permitted Amplification Devices**

Mr. Carlton Gilbert

March 7, 2011

Page 10

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

### **Requested Conditions**

11(a). A starting device consisting of a "buzzer" or "tone" (currently the Colorado System device), and a hand held microphone may be used during swim meets to communicate to the swimmers the start of a race and shall be operated only in compliance with the Montgomery County noise ordinance. A public address system device consisting of a microphone with small speakers (2) mounted on the exterior of the pool bath house, may be used only to announce instructions to members in case of emergency. The public address system may not be used for any other activities, including evening social activities. The public address system shall be operated only in compliance with the Montgomery County noise ordinance.

### **12. Lighting**

12(a). All external and internal lights on the property will be turned off within 30 minutes of closing, except as described herein for Social Events.

12(b). Lighting must be located, shielded, landscaped or otherwise buffered and maintained so that no direct light or glare or reflection intrudes into an adjacent or nearby residential property, or interferes with the safe operation of vehicles moving on or near the premises.

12(c). Lighting from vending machine(s) will be screened from adjacent and nearby residential properties.

### **13. Parking and traffic**

13(a). TWRA will appoint and identify a member of the Board of Directors to monitor and enforce parking and traffic rules amongst members, guests and visitors, and/or mitigate parking and traffic impact on the neighborhood. Contact information will be posted on the TWRA and TWRA swim team web sites and physically on the pool property. The Board member may delegate the responsibility to another Board member however TWRA must post contact information for the responsible member for each swim meet and social event.

13(b). Vehicles are prohibited from drop-off or pick-up activity at or near the driveway entrance. Membership and guest literature, including the TWRA and TWRA swim team web sites, will include a statement of the prohibition.

13(c). TWRA will encourage members, their guests and visitors to car pool or use alternative means of transportation during scheduled events and swim meets to reduce the traffic and parking impact on the neighborhood.

13(d). TWRA will encourage members, their guests and visitors to not park in the Tilden Woods Park parking lot or on neighborhood streets without sidewalks.

Mr. Carlton Gilbert

March 7, 2011

Page 11

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

## **Requested Conditions**

### **14. Neighborhood Liaison Committee (NLC)**

14(a). NLC Membership - TWRA shall establish a NLC by May 15th of each year by distributing a letter as soon as practical after the TWRA annual meeting to the residents and owners of at least the following properties: 6814 Tilden Lane, 6812 Tilden Lane, 6801 Stonewood Terrace, 6816 Tilden Lane, 6805 Tilden Lane, 6807 Tilden Lane, 6809 Tilden Lane and 6804 Stonewood Terrace, requesting return notice to TWRA of participation in the NLC for the next 12 months or until the subsequent annual notice is requested. Membership in the NLC is open to members of the neighborhood and will be accepted upon request. Membership will run for one year or until such time beyond one year that TWRA establishes the subsequent year membership.

14(b). NLC Meetings - TWRA will advertise and convene a NLC meeting in April or early May, at which time a schedule of the anticipated swim meets and other activities will be provided. During the Season of Operation, TWRA shall convene a NLC meeting within ten (10) business days of receipt of a request for a further meeting by any participant of the NLC.

14(c). NLC Contact Person - Before Memorial Day each year, TWRA will designate and identify on the TWRA and TWRA swim team web sites a member of the Board of Directors of TWRA, with an email address and telephone number, as a contact person for NLC members and the neighborhood.

14(d). Posting - The TWRA shall post the Special Exception conditions set by the Board of Appeals on the TWRA and TWRA swim team web sites and in paper form at the pool premises at a location readily accessible to the members and guests.

14(e). Notification - The Board of Directors NLC contact person will notify the following adjoining and confronting property owners at least five (5) days in advance of any request by the TWRA for approval of Montgomery County or state officials of operational or physical changes or modifications to the pool and/or property: M-NCPPC, and the residents and property owners of the following properties: 6814 Tilden Lane, 6812 Tilden Lane, 6801 Stonewood Terrace, 6816 Tilden Lane, 6805 Tilden Lane, 6807 Tilden Lane, 6809 Tilden Lane and 6804 Stonewood Terrace. These properties are to receive notice as adjoining and confronting property owners as required by the Zoning Ordinance.

**Table 1. Comparison of requested conditions and conditions included with Petitioner's Statement of Operations**

Condition	Requested Condition	Condition Proposed by Petitioner in Statement of Operations
<p>Amplified Noise</p>	<p>1(a). No amplified music or other amplified sound, noisemakers horns, drums or other musical instruments shall be used on the pool property except for the Permitted Amplification Devices described herein.</p> <p>11(a). A starting device consisting of a "buzzer" or "tone" (currently the Colorado System device), and a hand held microphone may be used during swim meets to communicate to the swimmers the start of a race and shall be operated only in compliance with the Montgomery County noise ordinance. A public address system device consisting of a microphone with small speakers (2) mounted on the exterior of the pool bath house, may be used only to announce instructions to members in case of emergency. The public address system may not be used for any other activities, including evening social activities. The public address system shall be operated only in compliance with the Montgomery County noise ordinance.</p>	<p>III. <u>Operation</u></p> <p>B. <u>Amplification Devices</u></p> <p>1. <u>Restricted Hours of Use</u>                      No amplified noise shall be permitted before 9:00a.m. or after 10:00p.m., unless otherwise indicated below.</p> <p>2. <u>Montgomery County Noise Ordinance Compliance</u>                      Any amplified noise on-site shall strictly comply with the Montgomery County noise ordinance and in accordance with any recommendations by the noise program manager of the Division of Environmental Policy and Compliance, Montgomery County Department of Environmental Protection.</p> <p>3. <u>Swim Meet Starting System</u></p> <p>a. Use of a standard swim meet starting system with a "buzzer" or "tone" that complies with the Montgomery County Noise Ordinance and/or other applicable guidelines, is permitted to regulate swim meets.</p> <p>b. The starting device shall not be used prior to 9:00a.m. or after 9:00p.m., with the following exceptions:</p> <p>i. No later than 9:30p.m. during a Wednesday evening "B" meet that extends past 9:00a.m., as specified in Section III.A.2.f. above.</p> <p>ii. No earlier than 8:00a.m. during a Time Trial Meet or Divisional Meet, as specified in Section III.A.2.g. and Section III.A.2.h. above.</p> <p>4. <u>Speaker System</u></p> <p>a. Two (2) portable speakers may be used during allowable hours as specified in this Section, but must be located in such a manner that sound is at all times directed toward the adjacent M-NCPPC park property to the east and away from any residential neighbors to the north, west and southwest.</p> <p>b. The above speaker system may be used during swim meets and on no more than ten (10) occasions during the year and for no more than four (4) hours on each</p>

**Table 1. Comparison of requested conditions and conditions included with Petitioner's Statement of Operations**

Condition	Requested Condition	Condition Proposed by Petitioner in Statement of Operations
Screening and Landscaping	<p>2(a). <u>Generally</u> - Install and maintain year-round screening of pool and property from neighbors by planting and maintaining tight or compact, evergreen (such as arborvitea as may be recommended by the Technical Staff of M-NCPPC) hedge, planted 3 to 4 feet on-center and at least 7-8 feet in height at the time of planting.</p> <p>2(b). <u>South-west corner</u> - Install and maintain 30-40 arborvitea, at least 7-8 feet high at time of planting, to create a tight or compact, evergreen hedge for year-round screening, inside the property fence, on an approximate line of the 120 feet from the south-west corner of the sand volleyball court to the south-west corner of the pool deck surrounding the Tot Pool.</p> <p>2(c). <u>Western border</u> - Remove remaining three (3) white pines on western border of property and replace and maintain row of arborvitea inside the property fence on the western border of the property in a manner similar to the proposed landscape plan of December 21, 2009 of sufficient number to create a tight or compact, evergreen hedge for year-round screening of at least 6 feet as measured from the elevation of the sand volleyball court ..</p> <p>2(d). <u>Northern border</u> - Remove remaining white pines on northern border of property, and replace and maintain, on pool property, row of sufficient number of arborvitea or other evergreens to create tight or compact, evergreen hedge for year-round screening.</p> <p>2(e). <u>Maintenance- Landscaping</u> and lawn waste is to be removed from the property and not deposited in the adjoining park or properties. The buildings and grounds of the property shall be maintained throughout the year</p>	<p>occasion.</p>

**Table 1. Comparison of requested conditions and conditions included with Petitioner's Statement of Operations**

Condition	Requested Condition	Condition Proposed by Petitioner in Statement of Operations
Fencing	<p>including the collection and off-site disposal or any trash, debris, leaves and clippings and the removal of snow and ice and/or debris from the property's public sidewalks.</p> <p>3(a). Replace and maintain fence around pool property to not be less than 72 inches in height, measured on the outside, and 42 inches in height, measured on the inside, designed so as to minimize the possibility of unauthorized or unwary persons entering the pool area.</p>	
Season of Operation	<p>4(a). The pool and property may be open to members and guests for the swim season from the Saturday before Memorial Day to Labor Day and the pool and property will be closed to members and guests from Labor Day to the Saturday before Memorial Day.</p>	
Capacity and membership	<p>5(a). The capacity of the pool is 428 persons. At no time will there be more than 428 persons occupying the pool and property.</p> <p>5(b). Membership of Tilden Woods Recreation Association (TWRA) is limited to 322 families, as defined by controlling County or State law or regulation.</p> <p>5(c). Use of the pool and property is limited to members and guests. Guests must be accompanied by a member. The pool and property are for the exclusive use of bonded members and their guests.</p> <p>5(d). The pool and property is not open to the general public for any reason at any time.</p>	<p><u>II. Membership</u></p> <p>The approved special exception permits a total membership of 350 families. Each active family membership (i.e., adult family, young family, single parent family or couple membership) is equivalent to one (1) family membership. Each active single membership (i.e., one individual) is equivalent to one-half (1/2) a family membership. Inactive memberships will not be included.</p>
Employees	<p>6(a). The maximum number of employees (i.e., manager, assistant manager, maintenance, lifeguards, coaches, etc.) on the pool property at any one time shall not exceed twelve (12). Pool employees may enter the pool property no earlier than 30 minutes prior to the hours of operation and may remain on the property no more than 30 minutes after the hours of operation.</p>	<p><u>V. Employees</u></p> <p>The maximum number of employees (i.e., manager, assistant manager, maintenance, lifeguards, coaches, etc.) on the site at any one time shall not exceed twelve (12).</p>

**Table 1. Comparison of requested conditions and conditions included with Petitioner's Statement of Operations**

Condition	Requested Condition	Condition Proposed by Petitioner in Statement of Operations
<p>Hours of Operation.</p>	<p>7(a). <u>Membership General Hours</u> - prior to close of MCPS - Prior to the close of Montgomery County Public Schools (MCPS) for the summer, the pool and property may be open from 1 pm through 9 pm. Pool employees may remain on the property for no more than 30 minutes after closing.</p> <p>7(b). <u>Membership General Hours</u> - after close of MCPS - After the close of Montgomery County Public Schools (MCPS) for the summer, the pool and property may be open from 9 am to 9 pm. Swim team members may enter the pool property no earlier than 8:30 am for swim team practice during the week, on Monday through Friday.</p> <p>7(c). <u>Early swim</u> - The pool and property may be open for no more than 18 swimmers and 21 cars from 7 am to 8 am, Monday through Friday, for lap swimming by members of the pool. Cars must park in one of the 21 parking spaces on the eastern side of the parking lot. The lap swimming is not available to swim team members, swim lessons or commercial use. A minimum of two (2) and maximum of three (3) employees may be present during this time.</p> <p>7(d). <u>Saturday MCSL swim team meets at TWRA</u> - The pool and property may be open three (3) Saturdays a season for Montgomery County Swim League (MCSL) - A - swim team, dual meets and one (1) Saturday a season for a Time Trial meet at the pool property no earlier than 8 am to members of the participating swim teams for swimmer warm up. Meets are to not start before 9 am. Neither the starting device nor the public address system are to be used prior to the start of the meets.</p> <p>7(e). <u>Mid-week MCSL swim team meets at TWRA</u> - The</p>	<p>III. <u>Operation</u></p> <p>A. Hours of Operation</p> <p>1. The approved hours of operation under the original 1963 Opinion of the Board are as follows: "The hours of operation shall be from 9:00a.m. to 9:00p.m., six days a week, and from 11:00a.m. to 9:00p.m. on Sunday. There may be six late nights of operation no later than 11:00p.m."</p> <p>2. Proposed <u>additional</u> hours of operation:</p> <p>a. <u>Sundays</u>:</p> <p>i. 9:00a.m. to 11:00a.m.</p> <p>b. <u>Early Morning Lap Swim</u>:</p> <p>i. 6:30a.m. to 7:30a.m.</p> <p>ii. Monday through Friday.</p> <p>iii. Restricted to no more than 25 swimmers.</p> <p>c. <u>Swim Team - Weekday Practice</u>:</p> <p>i. Starting time - 8:30a.m.</p> <p>d. <u>Advanced Swimmers' Warm-up Prior to MCSL Saturday Swim Meets</u>:</p> <p>i. 6:15a.m. to 7:30a.m.</p> <p>ii. MCSL, currently schedules six (6) Saturday morning swim meets per year.</p> <p>iii. Restricted to no more than 25 swimmers.</p> <p>e. <u>General Warm-up Prior to MCSL Saturday Swim Meets</u>:</p> <p>i. 7:30a.m. to 9:00a.m.</p> <p>ii. MCSL currently schedules six (6) Saturday morning swim meets per year.</p> <p>f. <u>Swim Team - Wednesday Evening "B" Meets</u>:</p> <p>i. Closing hour extended to no later than 9:30p.m.</p> <p>ii. Restricted to no more than three (3) Wednesday evenings per year.</p> <p>g. <u>Time Trials-Additional Saturday Meet One Week Prior to First MCSL Saturday Swim Meet</u>:</p> <p>i. Starting time for Time Trial Meet - no earlier than 8:00a.m.</p> <p>ii. Advanced Swimmers' warm-up for Time Trial Meet may</p>



**Table 1. Comparison of requested conditions and conditions included with Petitioner's Statement of Operations**

Condition	Requested Condition	Condition Proposed by Petitioner in Statement of Operations
	<p>pool may conduct three (3) Wednesday evening MCSSL - B - swim team, dual meets until 9:00 pm.</p> <p>7(f). <u>Social Events</u> - The pool and property may be open until 11 pm no more than six (6) late nights during the season, after the close of MCPS. Members, guests and employees must exit the pool and property, and all lights must be turned off, no later than 11 pm on such nights.</p> <p>7(g). <u>Maintenance Activities</u> - The pool and property may be open to contractors for lawn, landscaping and other maintenance, deliveries and trash removal. Maintenance may only be conducted between 8 am and 7 pm Monday through Friday and between 9 am and 7 pm on Saturday and Sunday.</p>	<p>begin at 6:30a.m.</p> <p>iii. General warm-up for Time Trial Meet may begin at 7:00a.m.</p> <p>h. <u>Divisional Meet - Additional Saturday Meet No More Than Once Every Three (3) Years:</u></p> <p>i. Starting time for Divisional Meet - no earlier than 8:00a.m.</p> <p>ii. General warm-up for Divisional Meet may begin at 6:30a.m.</p> <p>i. Annual Swim Team Lock-In: One over-night Swim Team event known as the "Annual Lock-In" is permitted on one Saturday evening to Sunday morning per year, beginning at 9:00PM and ending at 6:30AM, subject to the noise restrictions outlined in Section III.B. below and parking restrictions outlined in Section IV.B. below.</p>
Alcohol	8(a). The transportation to and consumption upon the property of alcoholic beverages of any kind are prohibited.	
Food Service	9(a). The property shall not be used or operated as a food service facility.	
Sports Activity	10(a). The property shall not contain a basketball hoop.	
Lighting	<p>12(a). All external and internal lights on the property will be turned off within 30 minutes of closing, except as described herein for Social Events.</p> <p>12(b). Lighting must be located, shielded, landscaped or otherwise buffered and maintained so that no direct light or glare or reflection intrudes into an adjacent or nearby residential property, or interferes with the safe operation of vehicles moving on or near the premises.</p> <p>12(c). Lighting from vending machine(s) will be screened from adjacent and nearby residential properties.</p>	<p>III. <u>Operation</u></p> <p>C. Lighting</p> <p>1. All internal and external lights will be turned off within 1/2 hour of closing.</p>

**Table 1. Comparison of requested conditions and conditions included with Petitioner's Statement of Operations**

Condition	Requested Condition	Condition Proposed by Petitioner in Statement of Operations
<p>Parking and traffic</p>	<p>13(a). TWRA will appoint and identify a member of the Board of Directors to monitor and enforce parking and traffic rules amongst members, guests and visitors, and/or mitigate parking and traffic impact on the neighborhood. Contact information will be posted on the TWRA and TWRA swim team web sites and physically on the pool property. The Board member may delegate the responsibility to another Board member however TWRA must post contact information for the responsible member for each swim meet and social event.</p> <p>13(b). Vehicles are prohibited from drop-off or pick-up activity at or near the driveway entrance. Membership and guest literature, including the TWRA and TWRA swim team web sites, will include a statement of the prohibition.</p> <p>13(c). TWRA will encourage members, their guests and visitors to car pool or use alternative means of transportation during scheduled events and swim meets to reduce the traffic and parking impact on the neighborhood.</p> <p>13(d). TWRA will encourage members, their guests and visitors to not park in the Tilden Woods Park parking lot or on neighborhood streets without sidewalks.</p>	<p>IV. <u>Parking</u></p> <p>A. Vehicles arriving or dropping off passengers prior to 7:30a.m. for Swim Team warm-ups/meet preparation and/or early morning lap swimming shall be permitted to park and/or drop off only in the eastern end of the parking lot, in order to minimize any potential disturbance to adjacent residences.</p> <p>B. Vehicles either leaving from or arriving to pick up individuals at the conclusion of the all-night Annual Lock-In event at or about 6:30a.m. the following Sunday morning, shall park in or pick-up individuals from the eastern end of the parking lot, in order to minimize any potential disturbance to adjacent residences. In addition, participating families will be required to carpool with at least three (3) Lock-In attendees per vehicle.</p> <p>C. To improve safety at the main driveway entrance, the Association shall prohibit vehicles from engaging in drop-off or pick-up activity at or near the main driveway entrance located off of Tilden Lane by posting a sign prohibiting such activity, as well as by discouraging members and members' children from standing at or near the driveway entrance by having staff periodically monitor and warn individuals away from the area.</p>
<p>Neighborhood Liaison Committee (NLC)</p>	<p>14(a). NLC Membership - TWRA shall establish a NLC by May 15th of each year by distributing a letter as soon as practical after the TWRA annual meeting to the residents and owners of at least the following properties: 6814 Tilden Lane, 6812 Tilden Lane, 6801 Stonewood Terrace, 6816 Tilden Lane, 6805 Tilden Lane, 6807 Tilden Lane, 6809 Tilden Lane and 6804 Stonewood Terrace, requesting return notice to TWRA of participation in the NLC for the next 12 months or until the subsequent annual notice is requested. Membership in the NLC is</p>	<p>VI. <u>Neighborhood Liaison Committee</u></p> <p>The Association shall establish a Neighborhood Liaison Committee (NLC) at the start of each year by distributing a letter to adjacent neighbors requesting that those interested in participating in the NLC that year respond with their intent to do so. The Association will then convene the NLC meeting in April or early May, at which time a schedule of the Association's anticipated swim meets and other activities will be provided.</p> <p>During the Association's most active months of June, July, August</p>

**Table 1. Comparison of requested conditions and conditions included with Petitioner's Statement of Operations**

Condition	Requested Condition	Condition Proposed by Petitioner in Statement of Operations
	<p>open to members of the neighborhood and will be accepted upon request. Membership will run for one year or until such time beyond one year that TWRA establishes the subsequent year membership.</p> <p>14(b). NLC Meetings - TWRA will advertise and convene a NLC meeting in April or early May, at which time a schedule of the anticipated swim meets and other activities will be provided. During the Season of Operation, TWRA shall convene a NLC meeting within ten (10) business days of receipt of a request for a further meeting by any participant of the NLC.</p> <p>14(c). NLC Contact Person - Before Memorial Day each year, TWRA will designate and identify on the TWRA and TWRA swim team web sites a member of the Board of Directors of TWRA, with an email address and telephone number, as a contact person for NLC members and the neighborhood.</p> <p>14(d). Posting - The TWRA shall post the Special Exception conditions set by the Board of Appeals on the TWRA and TWRA swim team web sites and in paper form at the pool premises at a location readily accessible to the members and guests.</p> <p>13(e). Notification - The Board of Directors NLC contact person will notify the following adjoining and confronting property owners at least five (5) days in advance of any request by the TWRA for approval of Montgomery County or state officials of operational or physical changes or modifications to the pool and/or property: M-NCPPC, and the residents and property owners of the following properties: 6814 Tilden Lane, 6812 Tilden Lane, 6801 Stonewood Terrace, 6816 Tilden Lane, 6805 Tilden Lane,</p>	<p>and September, the Association shall re-convene the NLC within ten (10) business days of receipt of a request for a further meeting by any participant of the NLC.</p>

**Table 1. Comparison of requested conditions and conditions included with Petitioner's Statement of Operations**

Condition	Requested Condition	Condition Proposed by Petitioner in Statement of Operations
	6807 Tilden Lane, 6809 Tilden Lane and 6804 Stonewood Terrace. These properties are to receive notice as adjoining and confronting property owners as required by the Zoning Ordinance.	

Mr. Carlton Gilbert

March 7, 2011

Page 20

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

## A. Standard of Evaluation

Section 59-G-1.2.1 of the Zoning Ordinance specifies that

A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

As noted in the Technical Staff report of February 8, 2006 in CBA-1495-A:

... previous special exception cases[ have established that] seven criteria are used to identify the physical and operational characteristics of a use. Those criteria are size, scale, scope, lighting, noise, traffic, and the environment.

The inherent, generic physical and operational characteristics associated with a community swim club and associated activities include: the lighting, vehicular trips to and from the site by members, staff, and visitors to the club; noise associated with the various activities on the site; and lighting.

Webster's dictionaries further define "inherent" as a characteristic "involved in the constitution or essential character of something". Webster's provides "intrinsic" and "essential" as synonyms.<sup>35</sup>

---

<sup>35</sup> See CBA-1383 Exhibit No. 33(kk).

Mr. Carlton Gilbert

March 7, 2011

Page 21

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

## **B. Consideration of Requested Conditions**

While specific requested conditions are discussed below and herein, it will be appreciated that the totality of the requested conditions is proposed to safeguard the general community interest and welfare, protect nearby properties and the general neighborhood, eliminate non-inherent adverse effects and minimize the impact of inherent adverse effects of the Petitioner's current operations and activities implicitly or explicitly included in the proposed Statement of Operations.

### **1. Noise**

1(a). No amplified music or other amplified sound, noisemakers horns, drums or other musical instruments shall be used on the pool property except for the Permitted Amplification Devices described herein.

### **10. Permitted Amplification Devices**

10(a). A starting device consisting of a "buzzer" or "tone" (currently the Colorado System device), and a hand held microphone may be used during swim meets to communicate to the swimmers the start of a race and shall be operated only in compliance with the Montgomery County noise ordinance. A public address system device consisting of a microphone with small speakers (2) mounted on the exterior of the pool bath house, may be used only to announce instructions to members in case of emergency. The public address system may not be used for any other activities, including evening social activities. The public address system shall be operated only in compliance with the Montgomery County noise ordinance.

The use of amplified music or amplified sound is not inherent to operation of a community swimming pool. In fact, the Board of Appeals has regularly denied requests by community swimming pools to use amplified music or sound, other than in connection with safety announcements and some limited announcements at swim meet activities.<sup>36</sup> The Board of Appeals prohibition

---

<sup>36</sup> See for example, Opinion in Petition of Flower Valley Bath & Racquet Club, Inc. Case No. 2212 (July 11, 1967) (CBA-1383 Exhibit 75(m)) (**Condition 14. "The use of amplification equipment shall be for the exclusive use of the manager and the life guards."**); Corrected Opinion in Petition of Little Falls Swim Club Case No. S-289-B (June 8, 2005), copy attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-98) (**Statement of Operations to include "No amplified music, other amplified sound, or noisemakers shall be permitted at pep rallies."** and "LFSC uses

Mr. Carlton Gilbert

March 7, 2011

Page 22

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

---

a public address system consisting of (1) a microphone with two small speakers located on the exterior of the pool bath house, which is used only to announce events at swim meets, and (2) the Colorado System device, which consists of a starting buzzer that is used to start events at swim meets, and a hand-held microphone that is used in swim meets to communicate to swimmers that start of a race, and in dive meets to announce the dive events.", and approval of existing site features: "Two small loudspeakers on the bath house, for use with a public address system to be used exclusively during swim meets and at no other times."); Opinion in Petition of Manor Woods Swim Club, Inc. Case No. 2278 (November 27, 1967) (CBA-1383 Exhibit 75(n)) (**Condition 8.** "The use of amplification equipment shall be for the exclusive use of the manager and lifeguards, and no starting guns shall be used in connection with the facility."); Opinion in Petition of Palisades Swimming Pool association, Inc. Case No. 2422 (August 20, 1968) (CBA-1383 Exhibit 75(o)) (**Condition 5.** "The use of amplification equipment shall be for the exclusive use of the manager and the lifeguards, and no starting guns shall be used in connection with the facility."); Opinion in Petition of Country Glen Club, Inc. Case No. S-61 (April 14, 1972), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-99) (**Condition 5.** "No mechanical or electronic means of amplifying speech or music shall be installed or permitted to be used upon the subject property; nor shall the performance of live music be permitted or allowed."); Opinion in Petition of Damascus Recreation Association, Inc. Case No. S-545 (May 4, 1977), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-100) (**Condition 5.** "Any public address system for outdoor use shall be limited to necessary announcements during swimming meets or in emergencies, and shall not be used at any time to broadcast music out of doors." **Condition 8.** "Starting guns may be used only at swimming meets and not for practice sessions. Whistles shall be restricted to use by the pool manager, life guards, and swimming coach."); Opinion in Petition of Forest Knolls Pool, Inc. Case No. 2389 (May 28, 1968), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-96) ("The petitioner uses loud speakers only for announcements and emergency situations; no other amplification equipment is used."); Opinion in Inverness Recreation Club, Inc. Case Nos. S-506 and A-310 (October 6, 1976), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-101) (**Condition 6.** "The club shall be permitted to use a portable sound amplification system for necessary announcements in emergencies, and for use during not more than 6 competitive swimming meets in any one year. No sound amplification system may be used at any time to broadcast music out of doors."); Opinion in Petition and Appeal of Mill Creek Towne Swim Association, Inc. Case Nos. S-809 and A-869 (January 27, 1982), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-102) (**Condition 4.** "No music at the pool grounds will be amplified by means different from, or to a level greater than, that of a usual and conventional home reproduction system." **Condition 5.** "On no occasion will the County Noise Control Ordinance be violated."); Opinion in Petition of West Hillandale Swim Club, Inc. Case No. CBA-1193-A (December 19, 1984), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-103) (**Denial of Petition to permit modification of Condition 2 to "permit use of amplified sound equipment and/or public address system within the limits authorized by law (55 dBA at property line)."**); Petition of West Hillandale Swim Club, Inc. dated April 27, 2004 submitted by Ms. Soo Lee-Cho in CBA-1193 on behalf of the Petitioner, copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-104) ("In the original special exception grant, the petitioner proposed to use "no public address equipment unless that use is absolutely necessary for safety reasons" (see Board of Appeals Opinion dated January 12, 1962). As such, there are four (4) existing speakers installed along the rear/east side of the bath house, as shown on the attached Site Plan, that are used to make safety announcements and otherwise regulate members' use of the pool, such as "no running on the concrete deck", "no food or drink near the pool", etc. (see attached Photo No. 7). The speakers are also used at swim meets held by the West Hillandale swim team, a member of the Montgomery County Swim League, to announce start times and otherwise inform and

Mr. Carlton Gilbert

March 7, 2011

Page 23

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

against the use of amplified music or amplified sound is compelling evidence that amplified music and amplified sound is not an operational characteristics necessarily associated with a community swimming pool. The use of amplified music or amplified sound can not be inherent to operation of a community swimming pool as prohibition of an "inherent" (i.e., intrinsic or essential) characteristic of a use by the Board would be contrary to the grant of a special exception for that use as without the intrinsic or essential characteristic the use would not be able to continue. The use of amplified music and amplified sound is not inherent to the operation of a community swimming pool.

---

**organize the participants and spectators in connection with running the swim meet. There are no more than six meets during the season, each lasting approximately three hours. At no time are the speakers ever used to amplify music. The Swim Club is well aware of the Board of Appeals' decision to deny a previous modification request made by the Club in 1984 for the use of its sound equipment to amplify music at a few evening pool parties per year. At that time, a few neighbors expressed objection to the use of a public address system for the amplification of music and the potential excessive noise that might cause, which resulted in the Board's denial. The Swim Club understands that such use is prohibited and, therefore, has not and does not ever intend to use its speaker system for the amplification of music.";** Opinions in Petition of Wheaton Woods Swimming Pool Corporation Case Nos. 862 and 1564 (April 4, 1960 and May 20, 1964), copies attached as CBA-1383-A Exhibit Nos. \_\_\_ and \_\_\_ (Exhibit BJS-105 and Exhibit BJS-106) (**additional condition imposed in response to testimony at hearing "that the continued use of the public address system be limited to safety instructions to the bathers." and Condition 3 in later Opinion "The use of the loudspeaker shall be used only for safety warnings.";** Opinion in Petition of Northwest Branch Recreation Incorporated Case No. 1079 (July 10, 1961), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-107) (**Condition 5. "No public address system shall be used at any time. Megaphone permitted for safety purposes only.";** Opinion in Petition of East Gate Recreation Association, Inc. Case No. S-596 (February 15, 1978), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-108) (**Condition 9. "Any public address system for outdoor use shall be limited to necessary announcements during swimming meets or in emergencies, and shall not be used at any time to broadcast music out of doors. Performance of live music out of doors shall not be permitted.";** Opinion in Amendment to the Petition of Olney Mill Swim Club, Inc., Case No., 2781 (June 17, 1975), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-109) (**Condition 11. "Loudspeaker systems may be used only for announcements relating to safety, security, and special program events. No music (live, recorded or broadcast) may be played over the loudspeaker system at any hour.";** Opinion in Petition of M&S Development Corporation Quince Orchard Swim & tennis Club, Case No. S-455 (March 24, 1976), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-110) (**Condition 7. "Any public address system for outdoor use shall be limited to necessary announcements during swimming meets or in emergencies, and shall not be used at any time to broadcast music out of doors. Performance of live music out of doors shall not be permitted.";** Opinion in Petition of Stonegate Swim Club, Inc., Case No. S-526 (January 19, 1977), copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-111) (**Condition 9. "Any public address system for outdoor use shall be limited to necessary announcements during swimming meets or in emergencies, and shall not be used at any time to broadcast music out of doors. Performance of live music out of doors shall not be permitted.";**



Mr. Carlton Gilbert

March 7, 2011

Page 24

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The Petitioner has not met their burden of demonstrating, for example, that use of amplified music or amplified sound is an operational characteristics necessarily associated with a community swimming pool.

Evidence of record establishes that the use of amplified music and amplified sound at the site has adverse effects on many of the neighbors.

Ms. Ship testified during the Hearing of April 30, 2010 that use of amplified music during swim meets is "part of the experience" of swim meets and is "fun".<sup>37</sup> The Petitioner has used amplified music and amplified sound for swim meets, talent shows, movie nights<sup>38</sup>, adult parties<sup>39</sup>, kid's parties, live auctions<sup>40</sup>, and pep rallies. The Petitioner's plan to continue the unfettered use of amplified music and amplified sound is reflected in the Petitioner's proposal to only restrict the hours of use of amplified noise to 10 pm through 9 am.<sup>41</sup> The Petitioner additionally proposes to comply with the County Noise Ordinance<sup>42</sup> and to direct the speakers of the sound system away from neighbors<sup>43</sup> - presumably as

---

<sup>37</sup> See page 105, lines 1-21 of the Transcript of April 30, 2010 (copy attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-112):

"MR. GROSSMAN: They're using amplified music during the swim meet?

THE WITNESS: Yeah, we have music when, you know -- I mean, it's a fun activity. It's more than just a swim meet. It is a community gathering and the kids, the timers have to switch from one end of the pool to the other because some events are 25 and some are 50. And so, during that switch usually there's some music that's playing that's sort of fun. It's not particularly loud.

MR. GROSSMAN: I guess the other part, is it particularly necessary?

THE WITNESS: Well, it's part of the, you know, it's part of the experience. We are more than a swim team. It really is about community and all the different pieces that we have as part of our pool program and swim team program are part of what make it fun. If you just ask these kids to go swim 25 yards once a week, it wouldn't be fun. So, in order to get them interested and enjoying it and make it an activity that they want to do and that they want to be part of, and they want to continue to do, it has to be fun. It's not school."

<sup>38</sup> See for example, pages 50-57 and 61-63 of CBA-1383 Exhibit No. 33(a).

<sup>39</sup> See for example, CBA-1383 Exhibit No. 33(w) (Washington Post article quoting Amy Gabala, TWRA Pool event coordinator, as appreciating that noise from the 2005 adult party made "neighbors really mad") and CBA-1383 Exhibit No. 33(oo) (Email from Michelle Powell suggesting that the 2009 adult party was disturbing enough to warrant summoning of the police).

<sup>40</sup> See CBA-1383 Exhibit No. 77.

<sup>41</sup> See Condition III.(B.)(1.) of the Petitioner's proposed Statement of Operations.

<sup>42</sup> See Condition III.(B.)(2.) of the Petitioner's proposed Statement of Operations.

<sup>43</sup> See Condition III.(B.)(4.) of the Petitioner's proposed Statement of Operations.

Mr. Carlton Gilbert

March 7, 2011

Page 25

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

attempts to mitigate the adverse effects of amplified music and amplified sound on the neighborhood.

The proposed Statement of Operations describes a "Speaker System" as being limited to "Two (2) portable speakers". The additional information supplied by the Petitioner in a letter dated February 15, 2011 additionally describes an "amplified speaker/sound system" which additionally includes a range of devices which could include, and is not limited to, a "boombox" type player with built-in speakers ("with or without iPod dock" and a "12" two-way speaker system with powered mixer, mixing console and wireless hand-held microphone(s)"). Presumably the further unspecified components would also include the variety of amplifiers and microphones shown in Figures 13-16 and 26-31, on pages 51, 52 and 63 of CBA-1383 Exhibit No. 33(a).

The relevance of the Petitioner's further assurance that "Any amplified speaker/sound system used will be located/placed on site such that during use it will not be less than 75 feet away from any adjacent residential property line."<sup>44</sup>, is not clear. The reference to 75 feet is perhaps relevant to placement of "the swimming pool, including the apron and any buildings ... [which] must not at any point be closer than 75 feet from the nearest property line" according to § 59-G-2.56(a) of the Zoning Ordinance. The Petitioner is presumably not suggesting that the speakers and sound system will be as large as a building however past references to the pool's sound system purposefully creating a "wall of sound"<sup>45</sup> does beg the question.

The Petitioner is unlikely to be able or willing to limit the use of amplified music or amplified sound to a level or extent that it does not result in an adverse effect on nearby properties and the general neighborhood.

Beyond the measureable sound limitations of the Petitioner's proposed conditions, the noise regulations prohibit "noise disturbance[s]"<sup>46</sup>, defined as follows:

"Any sound that is:

- (1) Unpleasant, annoying, offensive, loud, or obnoxious;
- (2) Intermittent or continuous,
- (3) Abnormal for the time of day or location where it is produced;
- (4) Produced or correctible by human agency; and

---

<sup>44</sup> See page 2 of the Petitioner's letter of February 15, 2011.

<sup>45</sup> See pages 48-57 of CBA-1383 Exhibit 33(a) and reference to "Alfred "The Wall of Sound" Gabala" in CBA-1383 Exhibit 33(w).

<sup>46</sup> See § I(I), §II(H.)(4.), for example, of the Regulation (CBA-1383 Exhibit No. 33(yy)).

Mr. Carlton Gilbert

March 7, 2011

Page 26

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

- (5) Prejudicial to reasonable enjoyment of health, comfort, or safety of any individual or causes injury or damage to persons, property, or the conduct of business.”  
(Emphasis added.)

There is no arrangement of the speakers or use of a noise meter alleged to have been used in the 2010 pool season which has mitigated the adverse effect of amplified noise or amplified sound for the undersigned. The subject property is small (1.9 acres) with little or no tree buffer or screening for even non-amplified noise abatement. Moreover, directing speakers to the adjacent M-NCPPC park, as proposed by the Petitioner, merely provides the amplified sound an opportunity to propagate through and reflect off the trees and surfaces of the park, only to be delivered back to the undersigned’s property as either further distortion or possibly even greater amplification.<sup>47</sup>

Technical Staff recommendation of the prohibition of amplified music and amplified sound, as described in the above recommended condition (1), is requested as at least a non-inherent adverse effect of the Petitioner’s operation.

## **2. Screening and Landscaping**

### **2(a). Generally**

The screening and landscaping proposed by the Petitioner is insufficient to safeguard the general community interest and welfare and protect nearby properties and the general neighborhood.

Technical Staff recommendation of the screening and landscaping provisions of the requested conditions 2(a) is requested.

### **2(b). South-west corner**

---

<sup>47</sup> See “Noise Control – Outdoor Sound Propagation” J.S. Lamancusa, Penn State, 7/20/2009 (copy attached as CBA-1383-A Exhibit No. \_\_\_\_ (Exhibit BJS-119)), that describes “... the outdoor environment is anything but uniform. Changing meteorological conditions can easily cause fluctuations in sound levels by 10-20 dB over time periods of minutes. The longer the transmission path, the larger are the fluctuations in levels. Outdoor sound propagation is affected by many mechanisms, including:

- a) Source geometry and type (point, line, coherent, incoherent)
- b) Meteorological conditions (wind and temperature variations, atmospheric turbulence)
- c) Atmospheric absorption of sound
- d) Terrain type and contour (ground absorption of sound, reflections)
- e) Obstructions (buildings, barriers, vegetation, etc)” (p. 10.1) and “Refractive effects can cause both increases and decreases in sound levels compared to a uniform medium.” (p 10.8).

Mr. Carlton Gilbert

March 7, 2011

Page 27

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The Petitioner's landscape plan (2010) proposes placement of two (2), 7-8 ft. tall Arborvitae trees outside the fence, in the south-west corner of the property, which is shown on the plan as a 20 ft. width of property between the south-west corner of the fence and the southern property line.

The placement of only two (2) evergreen trees in the south-west corner of the property will not provide adequate screening for the same reasons the Petitioner previously argued that a six (6) ft. fence in the same location would not enhance screening (i.e., because of the approximate 10 ft. drop or slope from activity on the property to the property outside the fence)<sup>48</sup>.

Moreover, and perhaps more importantly, the Petitioner's landscape plan is in error in showing a 20 ft width available for planting outside the Petitioner's fence in the south-west corner of the property. As demonstrated below, greater screening is required to the south and south-west of the property, and the south-west corner of the fence to the southern property line is only approximately 29 inches (i.e., less than 2½ ft.).

As shown in the following Figure 84, there is no screening of the pool and property from the undersigned's carport and property line.

---

<sup>48</sup> See CBA-1383 Exhibit No. 31 ("Moreover, the site's topography along the south is steeply sloped (a drop of approximately 10 feet) such that had a five foot wooden fence been erected instead of the chain link per the original condition of approval, it would have done little to enhance the screening of pool facilities. It would have simply served to help demarcate the Swim Club's property line which is what the chain link fence currently does."). See also, the "Note" on page 3, ¶(5)(a.) of the Petitioner's March 4, 2011 MEMORANDUM (CBA-1383-A Exhibit No. \_\_\_). Figure 32 on page 66 of CBA-1383 Exhibit No. 33(a) demonstrates that a wooden fence was originally installed along at least the western side of the property.

Mr. Carlton Gilbert

March 7, 2011

Page 28

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)



Figure 84<sup>49</sup>.

As further shown in the following Figure 85, the undersigned's home and carport are clearly visible from the pool deck due to the lack of screening:



Figure 85<sup>50</sup>.

<sup>49</sup> Figure 84 was taken by the undersigned December 29, 2010 from the property line of 6804 Stonewood Terrace, Rockville, MD, using a SONY Cyber-shot (4.1 mega pixels) DSC-S60 camera. An 8½" x 11" copy of Figure 84 is separately attached.

<sup>50</sup> Figure 85 was taken by the undersigned December 23, 2010 outside the eastern fence of the Petitioner's property, using a SONY Cyber-shot (4.1 mega pixels) DSC-S60 camera.

Mr. Carlton Gilbert

March 7, 2011

Page 29

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The following Figure 86 is an enhanced duplicate of Figure 85 wherein the location of the undersigned's house has been highlighted with the aid of Irfanview software.



Figure 86.

More than the two (2) trees proposed in the Petitioner's 2010 Landscape Plan are required to provide adequate screening. The Petitioner is believed to appreciate as much as evidenced by the following proposal offered by the Petitioner in a letter of October 6, 2009<sup>51</sup> and discussed in a meeting with the People's Counsel on October 14, 2009 (wherein the circled "A"'s in the proposed placement of additional 7-8 ft. tall arborvitae):

---

<sup>51</sup> Copy attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-121).

Mr. Carlton Gilbert

March 7, 2011

Page 30

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

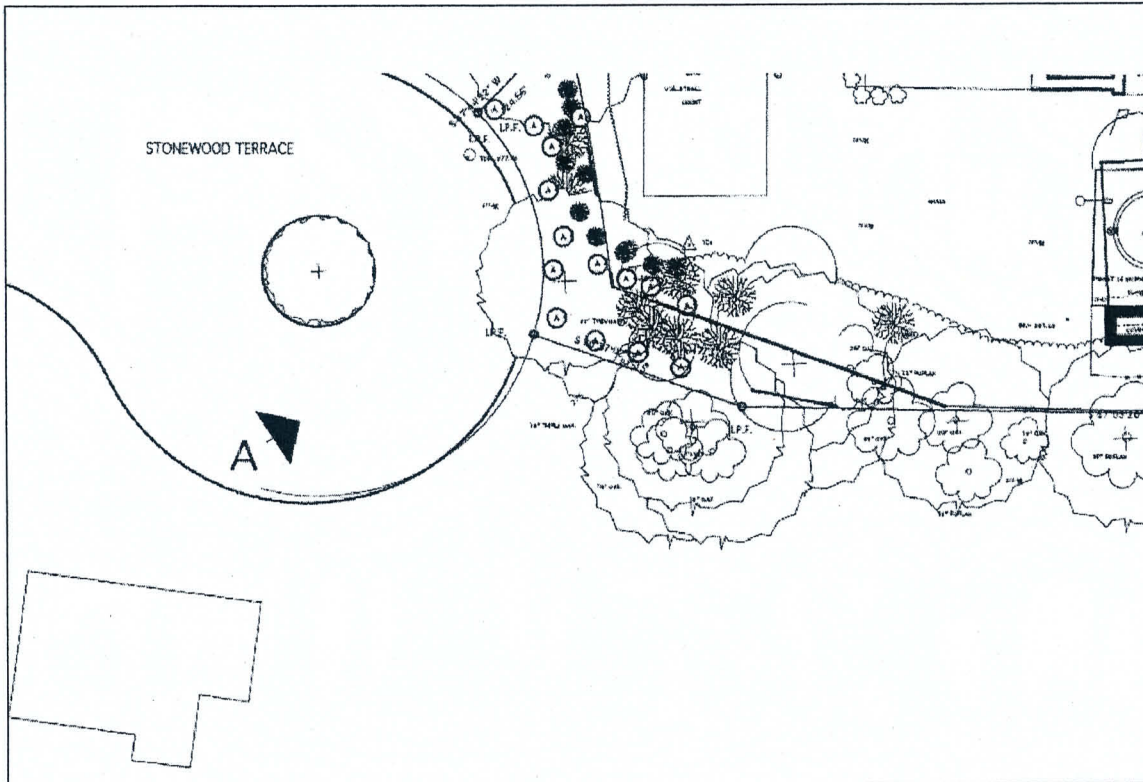


Figure 101. Petitioner's October 6, 2009 proposed Landscape Plan.

As noted above in requested condition 2(b) and shown in the following annotated excerpt from the Petitioner's 2010 Landscape Plan (Figure 87), a row of trees (i.e., "A") is requested to be placed on a line from the south-west corner of the volleyball court to the south-west corner of the pool deck surrounding the Tot Pool,

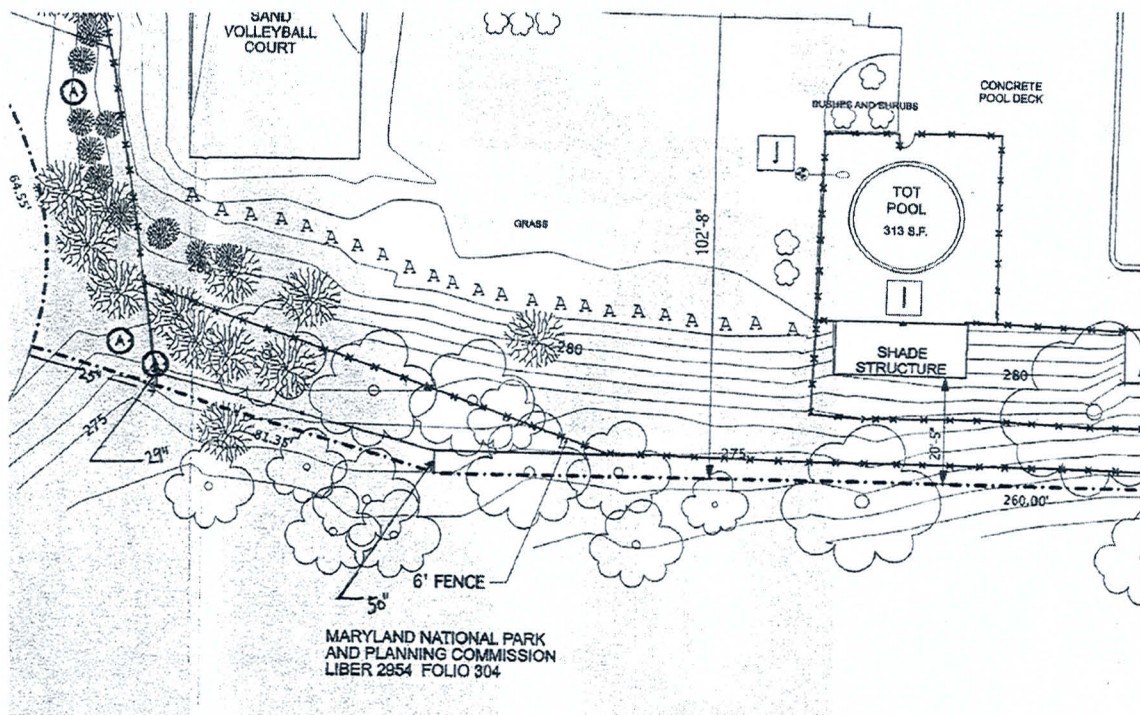


Figure 87.

The proposed location of the trees ("A"s) in Figure 87 is requested to ensure sufficient space for growth and maintenance by the Petitioner on the Petitioner's property, and to maximize the screening effect of the trees. The Petitioner has recognized in this regard that the topography of the property in the south-west corner minimizes the effect of screening at the fence line. Placing a line of screening at the location proposed in Figure 87 should more effectively screen the pool and property shown in, for example, Figures 84 and 85.

Moreover, as noted above, the Petitioner's incorrect placement of the fence in the south-west portion of the property on the Plans results in the proposal to add a tree on top of the fence post in the south-west corner of the property. The Petitioner's 2009 proposal reproduced above as Figure 101 would require planting in an area with insufficient space to expect successful growth.

Specifically, the correct location of the fence in the south-western portion of the property runs through the three small "x"s shown on Petitioner's 2010 Landscape Plan - south of the indicated location of the fence. The easterly Arborvitae proposed by the Petitioner in the south-west corner of the property (reproduced above as Figure 87) is overlapping the fence post in the south-west corner of the property.



Mr. Carlton Gilbert

March 7, 2011

Page 32

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

As shown the following reproduction of the property Plat, there are property pipe sets in south-west corner of the property and at the point 81.35 ft east along the property line.

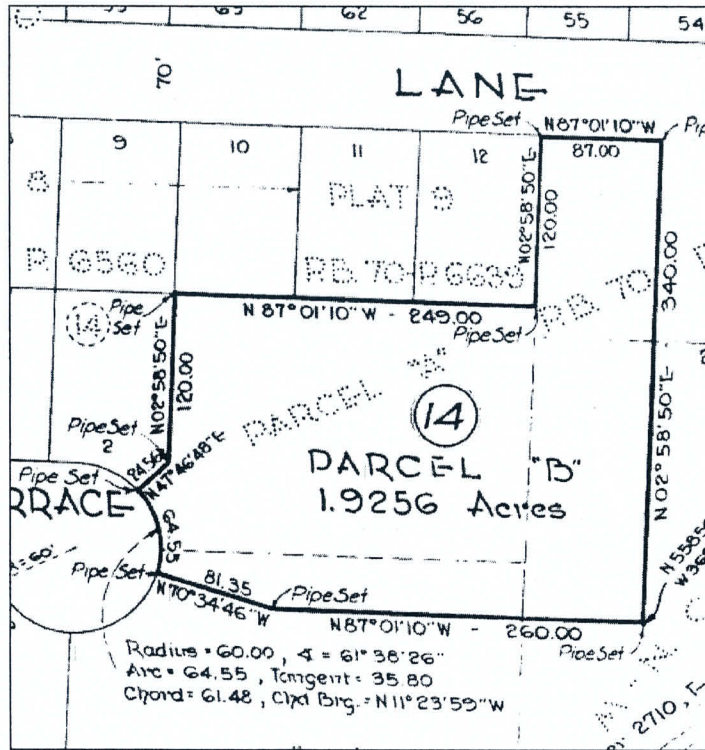


Figure 88.

The following Figure 89 shows the location of the south-west corner property pipe set in relation to the south-west-corner of the fence.

Mr. Carlton Gilbert

March 7, 2011

Page 33

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)



Figure 89.<sup>52</sup>

The following Figures 90 and 91 show the south-west corner property pipe set and the pipe set 81.35 ft east of the corner south-west corner property, respectively.



Figure 90.<sup>53</sup>



Figure 91.<sup>54</sup>

---

<sup>52</sup> Figure 89 was taken by the undersigned February 12, 2010 from near the property line of 6804 Stonewood Terrace, Rockville, MD, using a SONY Cyber-shot (4.1 mega pixels) DSC-S60 camera.

<sup>53</sup> Figure 90 was taken by the undersigned February 12, 2010 from the south-west corner of the TWRA property line using a SONY Cyber-shot (4.1 mega pixels) DSC-S60 camera.

<sup>54</sup> Figure 91 was taken by the undersigned February 12, 2010 from the easterly pipe set, using a SONY Cyber-shot (4.1 mega pixels) DSC-S60 camera.

Mr. Carlton Gilbert

March 7, 2011

Page 34

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The following Figures 92 and 93 show the lot line between the two (2) pipe sets looking east, wherein the fence is on the left of each figure.



Figure 92<sup>55</sup>.



Figure 93<sup>56</sup>.

<sup>55</sup> Figure 92 was taken by the undersigned February 12, 2010 from the south-west corner of the TWRA property looking east toward the pipe set 81.35 ft away shown with the flagged stake and the landscaping string marking the property line, using a SONY Cyber-shot (4.1 mega pixels) DSC-S60 camera.

<sup>56</sup> Figure 93 was taken by the undersigned February 19, 2010 from the south-west corner of the TWRA property looking east toward the pipe set 81.35 ft away shown with the flagged stake and

Mr. Carlton Gilbert

March 7, 2011

Page 35

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The following Figure 94 shows the lot line between the two (2) pipe sets, looking west, wherein the fence is on the right of the figure and the lot line is shown by the line between the stakes.



Figure 94<sup>57</sup>.

---

the landscaping string marking the property line, using a SONY Cyber-shot (4.1 mega pixels) DSC-S60 camera.

<sup>57</sup> Figure 94 was taken by the undersigned February 12, 2010 from the pipe set 81.35 ft east along the property line looking west toward the south-west corner of the TWRA property with the flagged stakes shown and the landscaping string marking the property line, using a SONY Cyber-shot (4.1 mega pixels) DSC-S60 camera.

Mr. Carlton Gilbert

March 7, 2011

Page 36

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The following Figures 95 and 96 show the distance of the property line to the fence at the south-west corner (about 29 inches) and at the easterly pipe set (about 49 inches), respectively.



Figure 95<sup>58</sup>.



Figure 96<sup>59</sup>.

<sup>58</sup>Figure 95 was taken by the undersigned February 12, 2010 from the south-west corner of the fence with the string showing the property line as shown in the figures above, using a SONY Cyber-shot (4.1 mega pixels) DSC-S60 camera.

<sup>59</sup>Figure 96 was taken by the undersigned February 12, 2010 from the easterly pipe set on the south edge of the property with the string showing the property line as shown in the figures above, using a SONY Cyber-shot (4.1 mega pixels) DSC-S60 camera.

The following Figures 97 and 98 further demonstrate the proper placement of the fence on the south-west corner by comparison with the existing fence and trees at the location.

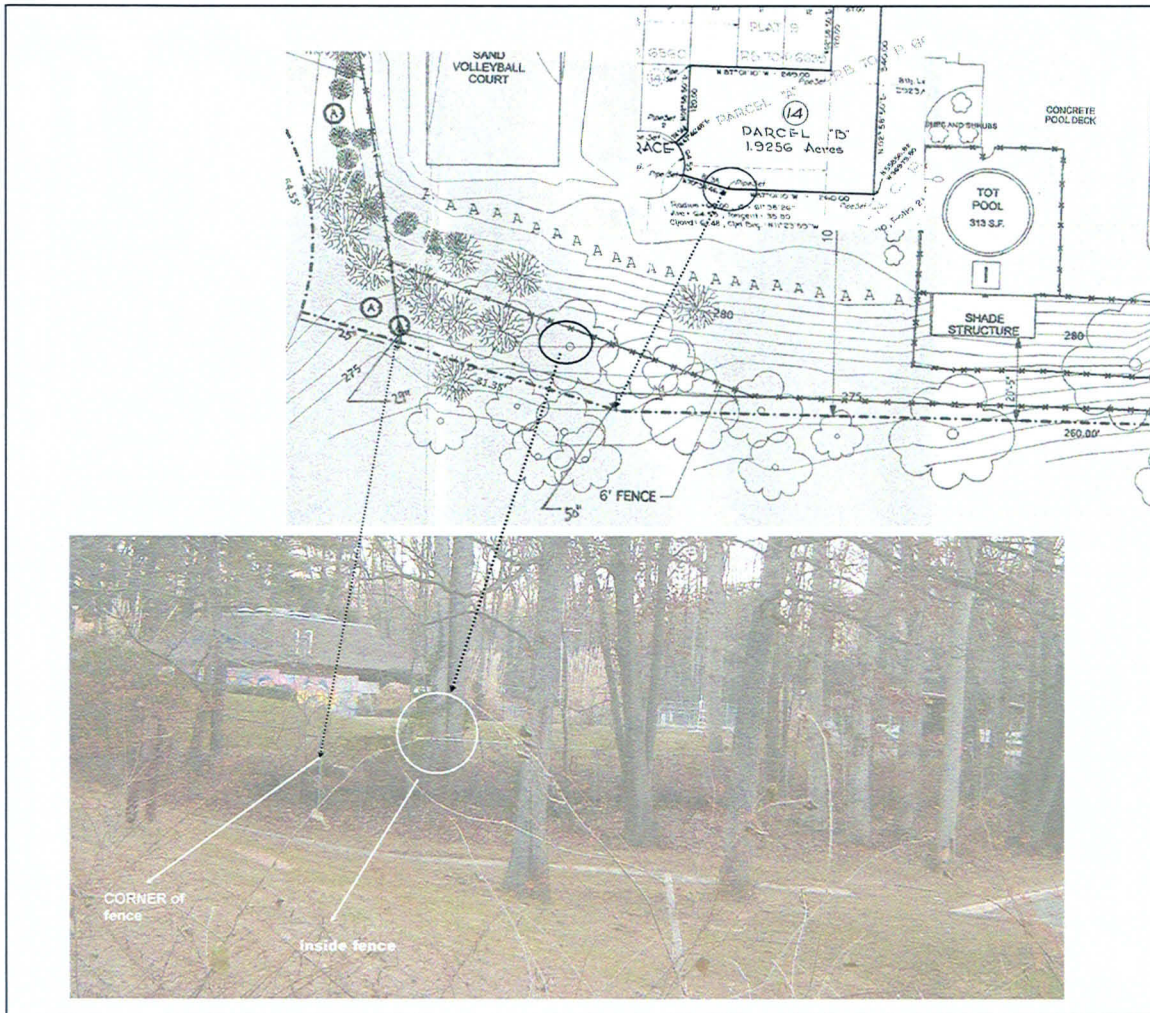


Figure 97.



Figure 98.

The above demonstrates that the Petitioner's Plans submitted with the December 30, 2010 Petition are incorrect in the placement of the fence in the south-west corner of the property.

For completeness, it is noted that the Landscape Plan of Existing conditions (certified by Gregory J. Osband) filed by the Petitioner with M-NCPPC in support of their request for an exemption from submitting a forest conservation

plan is different from the Landscape Plan submitted with the Petition of December 30, 2010 in the placement of the fence in the south-west corner of the property. Specifically, the following Figure 99 is a reproduction of the south-west corner of the site shown in the Petitioner's Landscape Plan filed with M-NCPPC.

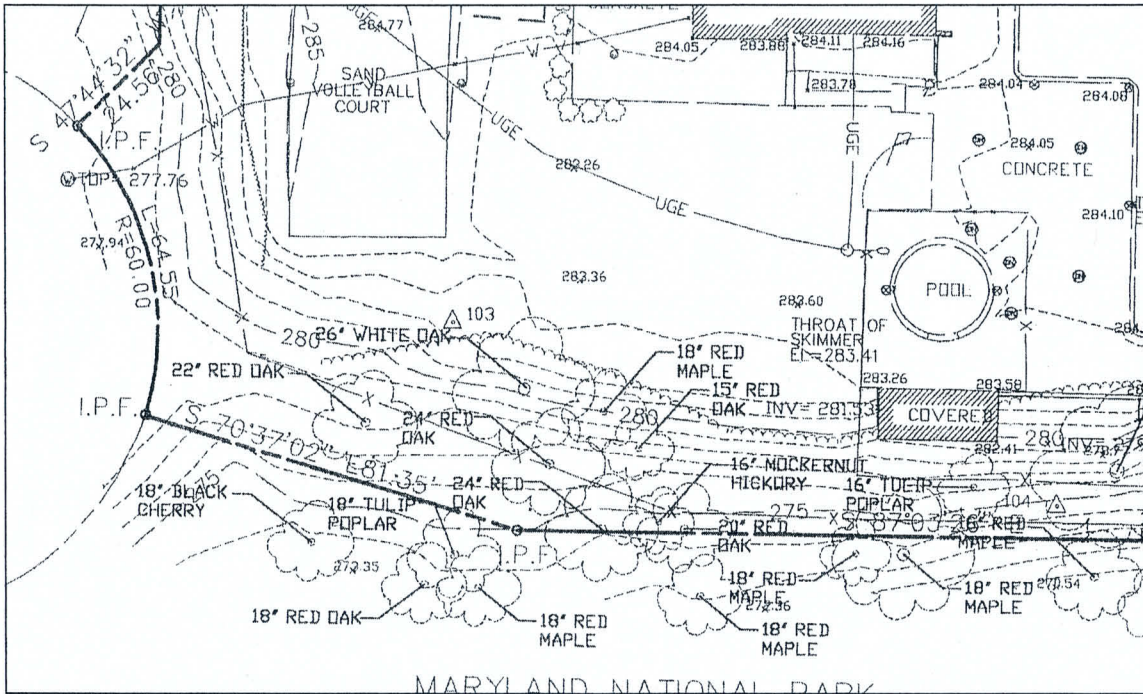


Figure 99.

Of interest are the general difference in arrangement of trees in Figure 99 as compared with Figures 87, 97 and 98 as well as the relative placement of the trees to the fence in the western portion of the southern fence and property lines.

Technical Staff recommendation of the screening and landscaping provisions of the requested condition 2(b), and as generally depicted in Figure 87, is requested.

#### 2(c). Western border

As noted by Mr. Kogok<sup>60</sup>, the landscaping and screening along the western border of the property has been neglected and now presents a potentially dangerous situation from falling limbs and possible trees. The Petitioner's proposal of December 30, 2010 to replace the one lost tree outside

<sup>60</sup>See letters of August 11, 2009, April 25, 2010, and October 17, 2010 (CBA-1383 Exhibit Nos. 33(m), 66(a) and 87, respectively).



Mr. Carlton Gilbert

March 7, 2011

Page 40

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

the western fence with one 7-8 ft. Arborvitae will not be sufficient to provide adequate screening along the Western fence or replace the neglected area adjacent to Mr. Kogok's property. The inadequacy of the current proposal is believed to be all but admitted by comparison of the current (2010) landscape plan<sup>61</sup> with Petitioner's proposed landscape plan submitted with the Petitioner's December 23, 2009 Petition<sup>62</sup>, an excerpt of which is shown below as Figure 102.

---

<sup>61</sup> See CBA-1383-A Exhibit No. \_\_\_\_.

<sup>62</sup> See CBA-1383 Exhibit No. 31(c).

Mr. Carlton Gilbert

March 7, 2011

Page 41

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

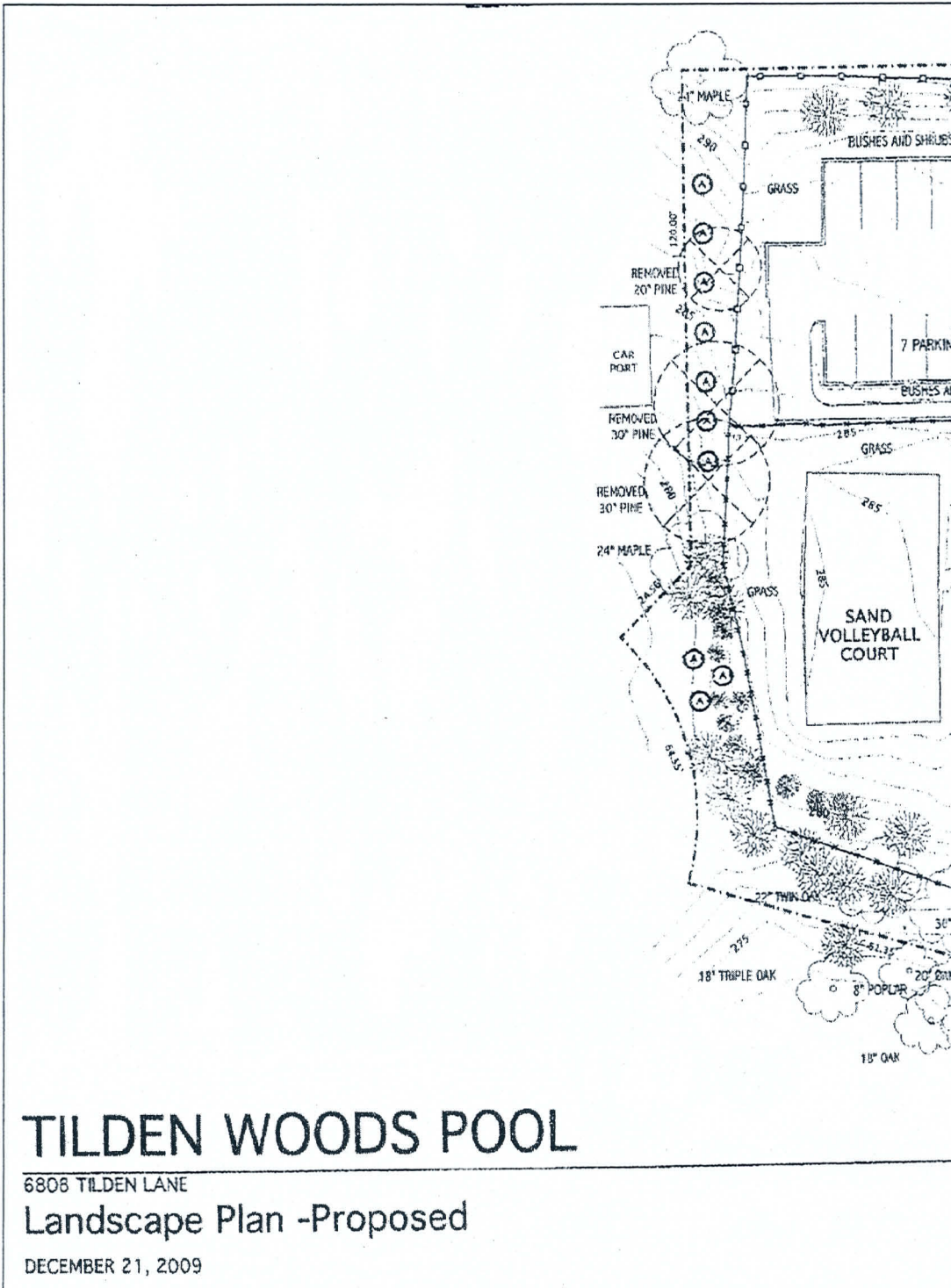


Figure 102.

Mr. Carlton Gilbert

March 7, 2011

Page 42

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The 2009 Petition proposed the following:

"a. The Inspection Report also calls attention to an area along the western boundary adjacent to the Stonewood Terrace cul-de-sac where a tree had come down leaving an opening in the landscape screening. As mentioned above and as shown on the enclosed Landscape Plan, the Swim Club proposes to install three (3) arborvitae evergreens (planting height of approximately 7-8 feet) to supplement the screening in this area.

b. In addition, the Landscape Plan proposes the removal of three (3) white pine trees which have become overgrown and have been identified as a problem for the owners of the adjacent property, Mr. and Mrs. Joseph Kogok. In their place, the Swim Club proposes to plant seven (7) arborvitae evergreens, also to be planted at a height of approximately 7-8 feet. The Landscape Plan has been reviewed by Mr./Mrs. Kogok and it is the Swim Club's understanding that they are in support of the removal of the pines adjacent to their property and replacement with arborvitae as proposed."

In addition to the Petitioner's original proposal for the western border, the proposed plantings should be placed inside the Petitioner's fence, to ensure continued maintenance and reduce the burden on M-NCPPC to maintain the landscaping outside the Petitioner's fence.

Technical Staff recommendation of the screening and landscaping provisions of the requested condition 2(c) is requested.

#### 2(d). Northern border

As noted in at least Figures 56-61 on pages 89-94 of CBA-1383 Exhibit 33(a), there is no effective screening from the houses on Tilden Lane. Storms in 2010 and 2011 have further demonstrated the vulnerability of the existing white pines to damage, with many limbs having been lost. The storms have further deteriorated any screening which may have been provided by the white pines when these photographs were taken in 2009.

Technical Staff recommendation of the screening and landscaping provisions of the requested condition 2(d) is requested.

#### 2(e). Maintenance

Petitioner has failed to maintain the landscaping on the property. The south-west corner of the lot has become a refuse pile of grass clippings and downed tree limbs. Moreover, the side walk in front of the property is not kept

Mr. Carlton Gilbert

March 7, 2011

Page 43

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

clear of snow and ice in the winter, as is believed to be required of property owners.

Technical Staff recommendation of the screening and landscaping provisions of the requested conditions 2(e) is requested.

### **3. Fencing**

The Petitioner has described the fence as varying in height between 5 and 6 feet<sup>63</sup>. A group of concerned members has complained that the current fencing is falling apart and is too low for proper security.<sup>64</sup> The Petitioner's architect has advised that the existing fence does not meet the swimming pool code.<sup>65</sup>

As suggested by Mr. Purdue in the Board of Appeals Worksession of July 21, 2010<sup>66</sup>, a request has been made of the Div. of Licensure and Regulatory Services, Department of Health and Human Services of Montgomery County on January 31, 2011 to measure the fencing of the Site and advise on the internal and external fence heights and whether the existing fencing meets the criteria set forth in the regulations. The undersigned will separately submit any information received in response to this request.

Technical Staff recommendation of the fencing provisions of the requested condition 3(a) is requested.

### **4. Season of Operation**

A definite statement of the season of operation is requested.

The Petitioner's site is a "seasonal site" as defined in the Zoning Ordinance. The season of the pool has, for at least the fourteen pool seasons that the undersigned has lived next to the pool, been from Memorial Day weekend through Labor Day weekend. The pool and property has been closed to members and guests from Labor Day weekend through Memorial Day weekend.<sup>67</sup> As noted above in fn. 27, Ms. Burgett (TWRA Board member) has

---

<sup>63</sup> See Site Plan dated December 15, 2010 (CBA-1383-A Exhibit No. \_\_\_\_ ) describing the fence along the northern and southern borders as being 6 ft and the eastern fence height as being 5 ft; Petitioner's letter of December 23, 2009 (CBA-1383 Exhibit No. 31) describing the chain link fence on the southern, eastern and western borders of the property as being 5ft; and the Transcript of the Board of Appeals Worksession of January 13, 2010 (CBA-1383 Exhibit No. 46(c)), page 9, lines 19-21 and page 9, line 25.

<sup>64</sup> See CBA-1383 Exhibit No. 33(iii).

<sup>65</sup> See CBA-1383 Exhibit No. 33(b).

<sup>66</sup> See page 18, lines 13-16 of the Transcript (copy attached as CBA-1383-A Exhibit No. \_\_\_\_ (Exhibit BJS-120).

<sup>67</sup> See fn. 27 and exhibits cited and referred to therein.

Mr. Carlton Gilbert

March 7, 2011

Page 44

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

testified that the pool is only open in the summer. The testimony was offered as an example of minimal impact on the neighborhood.

Allowing the Petitioner to implicitly expand the pool season and/or use of the property to a year-round operation by failure to provide a specific condition defining and limiting the season of operation to the summer would be contrary to the Zoning Ordinance, contrary to the expectations of neighborhood, contrary to the history of prior use, and would have a substantial adverse impact on the neighborhood.

Technical Staff recommendation of the season of operation provisions of the requested conditions 4(a) is requested.

### **5. Capacity and membership**

#### **5(a) and 5(b). Capacity and family memberships**

The Petitioner's calculated pool capacity (i.e., 430 persons) on the December 15, 2010 Site Plan (CBA-1383-A Exhibit No. \_\_\_ ) results in a family membership of 323. See Code of Montgomery County Regulations (COMCOR) § 51.00.01.04(A.)<sup>68</sup>

As suggested by Mr. Purdue in the Board of Appeals Worksession of July 21, 2010<sup>69</sup>, a request has been made of the Div. of Licensure and Regulatory Services, Department of Health and Human Services of Montgomery County on January 7, 2011<sup>70</sup> to determine and establish the pool and enclosure capacities, as provided for in Section IV of the Manual on Public Swimming Pool Construction (April 23, 1992). A copy of Mr. Chinnia's response of January 24, 2011 is attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-97). The capacity of the pool stated in requested condition 5(a) is as determined by Mr. Chinnia.

Mr. Chinnia's reference to COMAR § 10.17.01.03(D)(2) is noted. The Technical Staff will appreciate that the Petitioner's appurtenant structures and equipment have not been previously approved and it is only through the present major modification that the Petitioner is seeking approval of the existing conditions.

---

<sup>68</sup> "A. The pool must be sized to the expected bather population, where this is predictable. Unless competent evidence to the contrary is shown, the minimum design population for:

1. A general use, competitive, community or neighborhood pool equals 1.33 times the stated family membership."

<sup>69</sup> See page 18, lines 13-16 of the Transcript (copy attached as CBA-1383 Exhibit No. \_\_\_ (Exhibit BJS-120).

<sup>70</sup> Copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-97).

Mr. Carlton Gilbert

March 7, 2011

Page 45

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The membership limit of requested condition 5(b) is based on Code of Montgomery County Regulations (COMCOR) § 51.00.01.04(A.). The 428 person capacity of the pool allows for a membership of 322 family memberships. Ms. Ship testified that the 2009 membership was 280 bonded members and 20 trial memberships and that it was unlikely to be any greater in 2010.<sup>71</sup>

The Petitioners proposal to define a new class of membership as an “active single membership” consisting of one individual and as being equal to a “family membership” is contrary to the County Regulations. Specifically, § 51.00.01.04(A.) defines an individual as being equivalent to 0.75 of a family membership (i.e., the pool must have a size capable of at least 1.33 times the stated family membership such that a family averages 1.33 persons or a person is  $(\frac{1}{1.33})$  families).

According to the Petitioner’s proposed condition II (Membership) of 350 family memberships, without redefining a family membership to include “active single membership”, the pool would be required to have a capacity of 466 persons (i.e., 350 family memberships x 1.33), which it does not.

If the Petitioner’s proposed condition II of 350 family membership were granted, with the Petitioner’s requested redefinition of family membership to include “active single membership” was granted, the pool would be required to have a capacity of 700 persons<sup>72</sup>, which it does not

In a similar manner, based on the family membership of 322 based on Mr. Chinnia’s capacity calculations, the Petitioner’s requested redefinition of family membership to include “active single membership” would require a pool capacity of 644 persons.

The Petitioner’s proposed capacities and redefinition of family memberships are contrary to the regulations and should not be recommended by the Technical Staff.

Technical Staff recommendation of the requested conditions 5(a) and 5(b) is requested.

5(c) and 5(d) Limiting use to members and guests

<sup>71</sup> See page 170, line 23 through page 172, line 25 of CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-112).

<sup>72</sup> That is, assuming a maximum of 350 memberships which could each be single members or “active single memberships (i.e., one individual) [being] equivalent to one-half (1/2) a family membership.”, the effective “family membership would be 700 (i.e., 350 divided by ½).

Mr. Carlton Gilbert

March 7, 2011

Page 46

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The Zoning Ordinance defines use of a community swimming pool as being limited to members and their guests<sup>73</sup>.

The Petitioner has, in 2010, held an adult party open to "members and non-members".<sup>74</sup> Moreover, the Petitioner has opened the property and pool for the general public as a "Doggie Dip"<sup>75</sup>. The pool property has also been open to a general public yard sale<sup>76</sup>

Unlimited use of the pool and property is contrary to the statute and specific conditions restating the requirements of the Zoning Ordinance are requested.

Technical Staff recommendation of the requested conditions 5(c) and 5(d) is requested.

## **6. Employees**

Requested condition 6(a), as compared with the Petitioner's proposed condition V, includes an additional limitation on the times employees may be present on the property. Employees are often heard on the property well after the pool is closed. The property should be vacated after any limited time required to clean the facilities after closing and it should not be necessary for employees to enter the property more than 30 minutes prior to opening the property and pool for members and their guests.

Technical Staff recommendation of the requested condition 6(a) is requested.

## **7. Hours of Operation**

### **7(a), 7(b) and 7(c) General Membership and Early Swim Hours**

The general membership hours of requested conditions 7(a) and 7(b) are similar to the operating hours included as the Petitioner's proposed conditions III.(A)(1), III.(A)(2)(a)(i) and III.(A)(2)(c)(i) with the additional limitation to incorporate the current practice of limited hours during while MCPS is open.

The early swim hours of requested condition 7(c) are modified as compared to the Petitioner's proposed condition III.(A)(2)(b)(i) and III.(A)(2)(b)(iii)

---

<sup>73</sup> See fn. 27 above and § 59-A-2.1 of the Zoning Ordinance.

<sup>74</sup> See "The Luxmanor Greensheet" June 2010, copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-122) and CBA-1383 Exhibit No. 75(q).

<sup>75</sup> See CBA-1383 Exhibit No. 33(nn).

<sup>76</sup> See CBA-1383 Exhibit No. 33(mm).

Mr. Carlton Gilbert

March 7, 2011

Page 47

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

in shifting the start and stop times to 30 minutes later and in limiting the number of swimmers to no more than 18. The modifications are requested as (1) if employees are allowed on the property 30 minutes prior to opening of the pool then the property will be occupied as early as 6 am according to the Petitioner's proposed 6:30 am start time, (2) activity of 25 swimmers with employees beginning at or likely before 6:30 am, even on a week day, will be an increase in noise and traffic which is reasonably expected to be adverse to the neighborhood, and (3) there are 21 parking spaces on the east side of the property according to the Petitioner's site plan of 2010 and limiting the occupancy during this time to 18 swimmers (i.e., allowing for three swimmers per lane in the 6-lane pool) and a maximum of three employees should allow for parking in only the 21 spaces on the east side of the parking lot.

Technical Staff recommendation of requested conditions 7(a), 7(b) and 7(c) is requested. The request for Technical Staff recommendation of requested conditions 7(a), 7(b) and 7(c) is not made in isolation but rather with the request for additional noise mitigation and prohibitions as well as additional screening described herein.

#### 7(d) Saturday MCSL swim team meets at TWRA

Swim teams are not an inherent characteristic of a community swimming pool. If swim teams were an inherent characteristic of a community swimming pool, then every community swimming pool would have a swim team and each community swimming pool would be a member of a swim team league. Swim teams are not intrinsic or essential characteristics of a community swimming pool.

Recognizing that swim teams are not inherent to community swimming pools does not mean that community swimming pools should not be allowed to use the pool to operate a swim team. Rather, the Zoning Ordinance requires consideration of non-inherent adverse effect of the use on nearby properties where non-inherent adverse effects are defined as physical and operational characteristics not necessarily associated with the particular use.

The physical and operational characteristics of the Petitioner's swim team adversely effect the nearby properties in a number of respects, including noise and traffic relating to extended hours of operation, amplified noise and amplified sound, and non-amplified noise, Many of the requested conditions are the result of being adversely effected by the Petitioner's operational and physical requirements of their swim team (i.e., a non-inherent characteristic) at the specific site.



Mr. Carlton Gilbert

March 7, 2011

Page 48

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

As described by the 2008 President of MCSL, Ms. Sally MacKenzie, swim teams join and “bow out” of the MCSL for a number of reasons<sup>77</sup>. The optional nature of league participation demonstrates that swim teams are not inherent (i.e., neither intrinsic nor essential) to the operation of a community swimming pool. Ms. MacKenzie provides the following further explanation of the swim league organization, its members and the often fractious relationship between swim teams and their own pools:

2. We have at least three kinds of pools in the league - public pools run by Rockville City or Montgomery County, homeowners pools (you belong to the pool because you live in that neighborhood and your yearly homeowners dues goes at least partly to support the pool), and private clubs (where you join the pool by paying annual dues and perhaps an initial membership fee or bond). I'd say, with homeowner pools, small swim teams are sometimes the result of the neighborhood aging. Once the houses begin to turn over to young families with swim team age children, the team often grows. With private clubs, sometimes there are too many of them in a small area and they are competing for a limited number of families. And I'm sure there are many other factors.

3. The Montgomery County Swim League has no power to sanction pools, even if it wanted to. I wonder if some people think that since we have Montgomery County in our title, we are a part of county government. We are not. We're just a volunteer group of parents from various pools running a fun summer program for kids.

4. I'm not sure I understand your point about a club or contractual agreement. Yes, if a pool has agreed to field a team, then we expect the team to follow the MCSL rules of competition and to participate for that season. We also appreciate, but can't compel teams to let us know in advance of the season if they are dropping out of the league so we can let the teams they would be swimming know. But sometimes the smaller teams don't know from summer to summer if they have the money, kids, and parent volunteers until the pools open in May. It should also be noted that sometimes teams

---

<sup>77</sup> See “Where have they gone?” July 23, 2008, <http://mcsl50.blogspot.com/2008/07/where-have-they-gone.html> (CBA-1383 Exhibit No. 33(II)) describing the disappearance of Merlands (1964), Cinnamon Woods (1990), Hungerford-Stoneridge (1990), Carter Hill (1991), Park Forest (1993), Wheaton Haven (1996), Pleasantview (2002) and Aspen Hill (2004) from the League during the noted years.

Mr. Carlton Gilbert

March 7, 2011

Page 49

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

and their pools don't quite get along. There's often a bit of tension among the non-team pool members who want to swim and find the pool is being used for practice or a swim meet. So sometimes [sic] teams aren't getting lots of support from their pools.

The Petitioner's swim team is not an inherent operational characteristic of the use of the property as a community swimming pool. The adverse effects of operating the pool in a manner asserted to be required by their swim team, such as extended hours of operation required for more swim team practice and meets, and amplified noise and amplified sound, and increased traffic at unusual hours therefore are not inherent adverse effects of the general operation of a community swimming pool.

As admitted by the Petitioner in the Hearing of April 30, 2010, the Board of Appeals has the authority and responsibility to review and approve the operational activities of a special exception use. It is not within the purview of the Department of Permitting Services (DPS) to authorize, review or approve operational activities of a special exception use.<sup>78, 79</sup> The relevance therefore of

---

<sup>78</sup> See April 30, 2010 Hearing Transcript at page 10, lines 3-25 (CBA 1383-A Exhibit No. \_\_\_\_ (Exhibit BJS-112)):

MR. GROSSMAN: Do you make the same argument or what argument do you make about operational activities that have been added without authorization from the Board of Appeals?

MS. LEE-CHO: Operational activities were not in the purview of the Department. Those aspects --

MR. GROSSMAN: The Department, what department?

MS. LEE-CHO: Department of Permitting Services or their predecessor entity at that time. So, the operational activities are within the purview of the Board today and we would need to modify our special exception in to conformance. That would be a present modification. But, the modification would only be those hours of operation that are different above and beyond, obviously, the 9:00 to 9:00 p.m. regular hours that are already approved under the special exception along with the six late night operations.

MR. GROSSMAN: So, I take it that, in effect the way you view it, your modification request is asking the Board of Appeals to approve now your existing structures and current operations as part of this special exception?

MS. LEE-CHO: And, because of the nature --

MR. GROSSMAN: Would you answer that yes or no?

MS. LEE-CHO: Correct. Yes. And, because of the ..."

<sup>79</sup> "[T]here was [also] no legal authority for DIL and DEP to approve the addition of new structures to a community swimming pool special exception without Board of Appeals approval. There was no Code provision that permitted these changes in 1968, and the successor 1972 Code, as amended in 1973, which is relied upon herein by Petitioner, limited DEP authority as follows ... The construction of entirely new structures (e.g., the shade structures) and the enlargement of the bathhouse, which is externally visible, do not fall within any authority granted to DIL/DEP by

Mr. Carlton Gilbert

March 7, 2011

Page 50

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

the following statement by Ms. Scala-Demby to the Technical Staff's considerations is unclear:

"... it has been the long-standing policy/practice of DPS that community swimming pool special exceptions operating in the County are permitted to engage/participate in/conduct swim team meets and related activities as a customary part of the **principal** community swimming pool special exception use.

DPS has never looked upon swim meets or swim team related activities by community swimming pools as an activity or use that necessitated additional approvals from the Board of Appeals."<sup>80</sup>

The stated DPS "policy/practice" has been admitted by the Petitioner as being outside the purview of DPS authority and responsibility.<sup>81</sup>

Moreover, the above reference to a "**principal**" use and stated conclusion that

"In DPS' opinion, swim team meets and related activities fit within the scope of the principal community swimming pool special exception use and are customary to the primary use"

are contrary to the following April 30, 2010 testimony of Ms. Scala-Demby that swim team activities are an accessory use<sup>82</sup>:

---

this provision. Petitioner appears to concede this point.... Thus, the DIL and DEP approvals may have been the practice of the time, but that practice appears to have been beyond their legal authority." See pages 35-36 of the Hearing Examiner's report dated June 28, 2010 (CBA-1383 Exhibit No. 80).

<sup>80</sup> See letter dated March 1, 2011 addressed to Ms. Lee-Cho and submitted to M-NCPPC March 4, 2011 (emphasis in original) (CBA-1383-A Exhibit No. \_\_).

<sup>81</sup> With regard to Ms. Scala-Demby's statement that most original special exception opinions of the Board of Appeals relating to community swimming pools did not reference swim teams, the following are noted: Opinion in Petition of East Gate Recreation Association, Inc. Case No. S-596 (February 15, 1978), copy attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-108) (conditions 9, 10 and 11), Opinion in Petition of Eldwick Homes association, Inc. Case No. S-388 (October 22, 1975), copy attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-127) (conditions 6 and 9), Opinion in Petition of Stonegate Swim Club, Inc., Case No. S-526 (January 19, 1977), copy attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-111) (conditions 9, 11 and 12), and Opinion in Petition of M&S Development Corporation Quince Orchard Swim & tennis Club, Case No. S-455 (March 24, 1976), copy attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-110) (conditions 9, 11 and 12). Other Board of Appeals opinions relating to modifications of originally granted special exceptions filed subsequent to the early 1970's (after formation of the MCSL) include references to swim teams.

<sup>82</sup> See page 66, lines 2-14 of the Transcript (CBA-1383-A Exhibit \_\_ (Exhibit BJS-112)).

Mr. Carlton Gilbert

March 7, 2011

Page 51

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

"MR. GROSSMAN: Any other questions because I'm not going to come back to Ms. Scala-Demby again after the cross-examination?

MS. LEE-CHO: I do, just general concepts of the zoning ordinance in terms of accessory uses.

BY MS. LEE-CHO:

Q Could you express or explain for us the Department's view of swim teams as it relates to recreation associations and swim clubs?

A Well, that would be an accessory use to the swim club. Most swim clubs have swim teams. It's a way of teaching and getting competition amongst different swim clubs and teams."

The Petitioner's swim team is not an inherent operational characteristic of the use of the property as a community swimming pool. The adverse effects of operating the pool in a manner asserted to be required by their swim team, such as extended hours of operation required for more swim team practice and meets, and amplified noise and amplified sound, and increased traffic at unusual hours therefore are not inherent adverse effects of the general operation of a community swimming pool.

The Petitioner's proposed conditions III(A)(2)(d), III(A)(2)(e), III(A)(2)(g)(ii) and III(A)(2)(g)(iii) are not required for participation in MCSL and are contrary to the MCSL suggestions for dual meets (i.e., "Plan warm ups so that all swimmers are out of the pool by 8:45. If the teams want a 30-minute warm up, the home team should get in the pool by 7:45 a.m. The home team can then warm up from 7:45 to 8:15 and the visiting team can get in from 8:15 to 8:45."<sup>83</sup>). Moreover, warm-ups are described by the MCSL Handbook as only being conducted at the host pool. The Petitioner's proposed condition allowing swim team member early morning warm-ups for meets held elsewhere is not required or contemplated by MCSL procedures.

The Petitioner has asserted that early warm ups for every Saturday meet is required to ensure the health and safety of the swimmers.<sup>84</sup> One can reasonably conclude however that the MCSL, with over 50 years of experience,

---

<sup>83</sup> See page 9 of "MCSL MEET MANAGEMENT HANDBOOK" attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-123).

<sup>84</sup> See for example, Letter of January 5, 2010 from Jennifer Barnes, Tilden Woods Head Coach (CBA-1383 Exhibit 33(cc)) ("Being able to start swim meets during the expanded hours allows the Tilden Woods swim team and their opponent to warmup in order to comply with the Montgomery County Swim League (MCSL) guidelines for swim meet start times. ... Giving these swimmers the opportunity to receive proper warm-up time helps prevent possible injury."); and Letter of June 24, 2010 from Ms. Ship (CBA-1383 Exhibit 79) ("At the request of one of the coaches, who wanted to ensure the safety of swimmers (as mentioned in our hearing, some of our swimmers are very high caliber athletes and require additional warm-up time to prevent injury), I allowed a few swimmers to use the pool during this time to warm-up.").

Mr. Carlton Gilbert

March 7, 2011

Page 52

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

would not design a warm up schedule which jeopardized swimmers' health and safety. More likely, the MCSL has attempted to strike a balance between fostering healthy competition and respecting the general welfare of neighbors<sup>85</sup>. Moreover, an hour warm-up period for a dual meet (i.e., 30 minutes per team) is traditional for summer swim leagues across the country.<sup>86</sup>

The Petitioner's proposed conditions III(A)(2)(d), III(A)(2)(e), III(A)(2)(g)(ii) and III(A)(2)(g)(iii) are not inherent characteristics of a community swimming pool and the proposed conditions have substantial adverse effects on the neighborhood. These proposed operations occur on Saturday mornings where many of the neighbors are resting and imposition on the peace and quiet of the neighborhood on the weekend, and especially on seven contiguous Saturdays as proposed, should not be allowed.

Requested condition 7(d), like requested condition 7(e), refer specifically to "dual meets" as a prohibition of the "Divisional Meet" of Petitioner's proposed condition III(A)(2)(h). The pool and property is "too small" to host divisional meets. The property does not "have the parking and the facility to be able to host those meets". Moreover, the Petitioner "know[s] that it [hosting divisional meets] would have a negative impact on the community."<sup>87</sup>

Technical Staff recommendation of requested condition 7(d) is requested.

#### 7(e) Saturday MCSL swim team meets at TWRA

The extension of hours of operation submitted as Petitioner's proposed condition III(A)(2)(f)(i) is understood to be required due to a larger swim team.<sup>88</sup> Ms. Ship explained in the April 30, 2010 Hearing that the start time was pushed back at some point from 6 pm to 5:30 pm to "decrease the impact on the community"<sup>89</sup> and end the meet by 9 pm. It is unclear how the previously-recognized negative impact on the community of concluding a swimming meet after 9 pm has been eliminated or decreased since the issue was last considered and resulted in an early start time.

---

<sup>85</sup> See for example, pages 49-50 of CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-123) ("MCSL GUIDELINES – 'Swim Meets Must Be Good Neighbors'").

<sup>86</sup> See for example, "Virginia Swimming Meet Safety Procedures" Steve Woolfolk, Safety Chair, Virginia Swimming, Inc., March 2009, page 3 (copy attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-124)); and "Seattle Parks and Recreation Summer Swim League Parent Packet" February 1, 2010, page 8 (first paragraph) (copy attached as CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-125)).

<sup>87</sup> See Testimony of Ms. Ship (TWRA President), page 100, lines 13-21 of the Transcript of Board of Appeals Hearing of April 30, 2010 (copy attached as CBA-1383-A \_\_ (Exhibit BJS-112)

<sup>88</sup> See April 30, 2010 Hearing Transcript page 96, lines 6 through page 97, line 4 (CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-112)).

<sup>89</sup> Id.

Mr. Carlton Gilbert

March 7, 2011

Page 53

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Ms. Ship admits that starting the meets earlier has been successful in resolving the negative impact on the community of running meets beyond 9 pm. Alternatives to the Petitioner's proposed condition III(A)(2)(f)(i) exist therefore for resolving the Petitioner's problems of running meets which are created by the size of the Petitioner's swim team. Specifically, the B swim meets could be started before 5:30 pm and/or the number of heats and/or participants could be decreased. The MCSL Meet Manual<sup>90</sup> suggests the following in this regard on pages 46-47:

"If your team has a time limit on "B" meets, you may find that you never get to the butterfly events. To address this issue, some teams occasionally reverse the order of events so that butterfly is swum first. If you want to do this at a "B" meet, be sure to discuss your plan in advance with the visiting team."

Moreover, the MCSL Meet Manual stresses that the "B" meets should be about fun "not a forced march to get finished before midnight."<sup>91</sup>

Technical Staff recommendation of requested condition 7(e) is requested.

#### 7(f) Social Events

The requested condition 7(f) is similar to the Petitioner's proposed condition III(A)(1) with the additional requirement that the 11 pm time is the time by which the pool and property should be vacated. The requested condition further requires that the social events must not occur while MCPS is open. The requested condition 7(f) prohibits the Petitioner's proposed condition III(A)(2)(i) – Annual Swim Team Lock-in.

The "Lock-in" is an over-night camping trip to the pool property. Participants have been referred to as "campers" in the TWRA literature.<sup>92</sup> Many years there is an open pit fire<sup>93</sup> during the camp-out. Activities of past "Lock-in" camping events have included "midnight swimming"<sup>94</sup> and "movies"<sup>95</sup> which is preceded by a variety or talent show. The activity can be so intense that TWRA literature has warned parents that the event can be "overwhelming" for children.<sup>96</sup>

---

<sup>90</sup> See CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-123).

<sup>91</sup> See page 48 of CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-123).

<sup>92</sup> See CBA-1383 Exhibit 33(ss)

<sup>93</sup> Id.

<sup>94</sup> See CBA-1383 Exhibit 33(rr).

<sup>95</sup> See CBA-1383 Exhibit 33(ss)

<sup>96</sup> Id.

Mr. Carlton Gilbert

March 7, 2011

Page 54

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The "Lock-in" or over-night camping on pool property is not an inherent characteristic of a community swimming pool.

The "Lock-in" adversely effects nearby properties and the general neighborhood beyond the traffic and noise issues which the Petitioner attempts to address with their proposed condition IV(B). The Board of Appeals was rightly concerned in the Hearing of July 15, 2009, about the adverse impact of increased traffic at 6:30 am on a Sunday morning after the "Lock-in". The additional activity on the site during the event however also has a substantial adverse impact on the neighborhood. Moreover, less intrusive alternatives exists in nearby camp grounds for the swim team to spend an evening together around the camp fire.

Technical Staff recommendation of requested condition 7(f) is requested.

#### 7(g) Maintenance

The Petitioner has regularly had maintenance performed on the property at unusual hours.<sup>97</sup> A provision addressing hours of maintenance was suggested in fn.17 of the Hearing Examiner's Report of June 28, 2010.<sup>98</sup> Ms. Ship is understood to have testified in the Hearing of April 30, 2010 that she would not object to limitations on hours of maintenance.<sup>99</sup>

Technical Staff recommendation of requested condition 7(g) is requested.

#### 8. Alcohol

The Petitioner serves alcohol at their annual adult party. It has been suggested that the Petitioner allowed consumption of alcohol at the 2010 Labor Day party, which was open to minors.

Consumption and/or storage of alcoholic beverages is not inherent to community swimming pools. The consumption and/or storage of alcoholic beverages have potentially serious adverse effects on the nearby properties and general neighborhood in increasing the potential for dangerous traffic and excessive noise.

The Petitioner's failure to request permission for the consumption and/or storage of alcoholic beverages at the pool property implicitly prohibits

---

<sup>97</sup> See for example, Letter from Ms. Keller of April 19, 2010 reporting on pool maintenance lasting past midnight on April 3, 2010 (CBA-1383 Exhibit No. 47)

<sup>98</sup> CBA-1383 Exhibit No. 80.

<sup>99</sup> See page 105, line 22 to page 106, line 16 of the Hearing Transcript (CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-112)).

Mr. Carlton Gilbert

March 7, 2011

Page 55

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

consumption and/or storage of alcoholic beverages.<sup>100</sup> An explicit prohibition is stated in requested condition 8(a).

Technical Staff recommendation of requested condition 8(a) is requested.

### **9. Food Service Facility**

The Petitioner has previously held banquets, barbeques and pancake breakfasts on the property. The Site Plan dated December 15, 2010 and submitted as a part of the Petition of December 30, 2010 includes a vending machine as the only source of food and/or food preparation. There is no description of food service facilities in the Site Plan or other materials submitted with the Petition of December 30, 2010.

The preparation and handling of food, especially as a food service provider, is believed to require special procedures, precautions and equipment and lack of such precautions and equipment could reasonably be expected to have adverse effects on the nearby properties and general neighborhood.

The Petitioner's failure to request permission to prepare and provide food as a food service facility implicitly prohibits such a use.<sup>101</sup> An explicit prohibition is stated in requested condition 9(a).

Technical Staff recommendation of requested condition 9(a) is requested.

### **10. Sports Activity**

The Petitioner's Site Plan of December 21, 2009 includes a basket ball "goal" in the south-eastern portion of the parking lot. The December 15, 2010 Site Plan, which describes the site conditions of the Petition of December 30, 2010 does not include the basket ball hoop or goal. The previous placement of the basket ball hoop is believed to create a potentially dangerous situation where children are playing basketball in a potentially busy parking lot where drivers could be easily distracted. Moreover, the basket ball hoop was in a location

---

<sup>100</sup> See Kowalski v. Lamar, 25 Md.App 493, 498, 334 A.2d 536, 539 (Court of Special Appeals of Maryland 1975) ("Any use other than those permitted and being carried on as of right or by special exception is prohibited.") (copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-126). See also, the Board of Appeals Opinion of Petition of Regency Estates Swim Club, Inc. Case No. 2007 (July 19, 1966), wherein the Board indicates that authorization of a use is not granted unless requested ("In addition, since no request was made to permit the sale of soft drinks and other refreshments, no such authority was granted.") (CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-118)); and the quoted passage from the Board of Appeals in the Opinion of Petition of Merrimack Park Recreation Association, Inc., Case No. 502 (May 22, 1961) in fn. 1 of CBA-1383 Exhibit No. 98.

<sup>101</sup> See Kowalski v. Lamar and the Opinion of Petition of Regency Estates Swim Club, Inc. referred to above.



Mr. Carlton Gilbert

March 7, 2011

Page 56

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

potentially blocking emergency vehicle access to the pool deck through the eastern edge of the pool deck.

The requested condition 9(b) will ensure that the potentially dangerous previous placement of the basket ball hoop will not be returned.

Technical Staff recommendation of requested condition 9(b) is requested.

### **11. Permitted Amplification Device**

The requested condition 10(a) is similar to the Petitioner's proposed condition III(B)(3)(a) with however additional conditions consistent with, for example, the requested condition 1(a).

Technical Staff recommendation of requested condition 10(a) is requested.

### **12. Lighting**

Requested condition 12(a) is similar to Petitioner's proposed condition (III)(C)(1) with the additional limitation consistent with the requested condition 7(f).

Requested condition 12(b) reinforces what should be clearly required by the at least §§ 59-G-1.23(f)-(h), 59-G-1.26 and 59-G-2.56 of the Zoning Ordinance and has been lacking to Petitioner's maintenance of the property.

Requested condition 12(c) addresses a specific aspect of the site and which should be easily addressed.

Technical Staff recommendation of requested conditions 12(a), 12(b) and 12(c) is requested.

### **13. Parking and Traffic**

The Petitioner's proposed conditions (IV)(A) and (IV)(B) are objected-to in referring to, and providing for, arrival on the property prior to 7:30 am and the "Lock-in".

The requested conditions 13(a), like the requested conditions 14(a)-14(e), are included to foster communication between the Petitioner and the neighbors.

The requested condition 13(b) is similar to the Petitioner's proposed condition (IV)(C) with additional provisions to enhance communication. Informing TWRA members of safety and traffic concerns of the neighbors as proposed in

Mr. Carlton Gilbert

March 7, 2011

Page 57

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

the requested conditions 13(b), 13(c) and 13(d) may reduce friction and allow a dialog to develop.

Technical Staff recommendation of requested conditions 13(a) – 13(d) is requested.

#### **14. Neighborhood Liaison Committee (NLC)**

Requested condition 14(a) provides notice to properties listed by the Petitioner as “Adjoining & Confronting Property Owners” as a part of the Petition dated December 30, 2010. The reference to “adjacent neighbors” in the Petitioner’s proposed condition (VI) could lead to confusion and misinterpretation<sup>102</sup>. The statement of the minimum specific properties in requested condition 14(a) is more definite.

Moreover, the requested condition 14(a) specifies that membership in the NLC is for a calendar year or such greater time as may be required until the Petitioner distributes the noted letter after the annual meeting. Again, this will hopefully reduce confusion and any unnecessary delay in keeping concerned neighbors and other interested members of the NLC informed.

In a similar manner, the provisions of requested conditions 14(b)-14(d) are submitted to provide certainty and definiteness as a structure for enhancing and encouraging future communication and trust. Requested condition 14(d), for example, should ensure that all members of the TWRA have access to and can be made aware of the existence and conditions of the special exception. Requested condition 14(e) is presented to also foster communication and transparency. The additional notice requirement is believed to be within the Board’s authority according to, at least § 59-G-1.22(a) and/or § 59-G-2.56(d) of the Zoning Ordinance.

Technical Staff recommendation of requested conditions 14(a) – 14(d) is requested.

### **C. Consideration of Additional Items Related to the Modification Request**

The Petition of December 30, 2010 includes, in addition to the Statement of Operations, various plans of the physical site which contain changes made since the original grant of the special exception. All of the changes made on the site since the special exception grant, for which the Petitioner now seeks approval, are submitted to be within the scope of the request for modification.

---

<sup>102</sup> See for example, Opinion in Petition of Olney Mill Swim Club, Case No.CBA-2781 (September 20, 1996) (copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-128).

Mr. Carlton Gilbert

March 7, 2011

Page 58

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Consideration by the Technical Staff, Planning Board, Hearing Examiner and Board of Appeals, therefore of the following further aspects of the modification request, in addition to the above, is requested.

### Variance

#### Pump house building

The pump house building is less than the required 25 ft. set back from the property line as required by §59-G-2.56(a) of the Zoning Ordinance and a variance should be required.

The Petitioner has submitted on March 4, 2011, at the reported request of the Technical Staff of M-NCPPC, a letter dated March 3, 2011 from David K. Niblock, Permitting Services Specialist, Department of Permitting Service, to "confirm[] the site's compliance with the setback requirements of Section 59-G-2.56(a)." <sup>103</sup>

Section 59-G-2.56(a) requires the following:

"(a) The swimming pool, including the apron and any buildings, must not at any point be closer than 75 feet from the nearest property line nor closer than 125 feet from any existing single-family or two-family dwelling; provided, that where the lot upon which it is located abuts a railroad right-of-way, publicly owned land or land in a commercial or industrial zone such pool may be constructed not less than 25 feet at any point from such railroad right-of-way, publicly owned land or commercial or industrial zone. Any buildings erected on the site of any such pool must comply with the yard requirements of the zone in which the pool is located."

Mr. Niblock opines that the pump house building on the east side of the pool is an "accessory building" and as such the second sentence of § 59-G-2.56(a) only requires a building setback from the property line of the minimum required for rear and side yard setback for the R-90 zone (i.e., 5 ft setback).

The pump house building however is a part of swimming pool - housing the pump, pipes and other required equipment to operate the pool - as an appurtenance, and as such is not subordinate to the pool or an accessory building. The pump house building is, according to the first sentence of § 59-G-2.56(a) required to be not less than 25 feet at any point from the southern and eastern property lines.

---

<sup>103</sup> See page 4 of Petitioner's letter dated March 4, 2011 (CBA-1383 Exhibit No. \_\_\_).

Mr. Carlton Gilbert

March 7, 2011

Page 59

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

The first sentence of § 59-G-2.56(a) describes requirements for "The swimming pool, including the apron and any buildings, ... such pool ...". The reference to "such pool" in the first sentence will be understood to refer to the "swimming pool, including the apron and any buildings," described earlier in the same sentence. Moreover, the description of the "swimming pool" as "including" does not limit those physical aspects of the site which would or should be considered a part of the "swimming pool". The first sentence therefore requires that the swimming pool, the apron, and any buildings, presumably which are a part of or appurtenant to the swimming pool, meet the setback requirements of the first sentence of § 59-G-2.56(a), which includes a 25 ft set back from publicly owned land.

The Zoning Ordinance definition of community swimming pool includes the "buildings necessary or incidental thereto" (i.e., A swimming pool or wading pool, including buildings necessary or incidental thereto, open to the general public and operated for profit."). Moreover, the Montgomery County Manual on Public Swimming Pool Construction<sup>104</sup> provides the following definition for a "swimming pool":

"Swimming Pool - Any artificial structure, basin, chamber or tank, except a private spa, either above or below ground, which is used or intended to be used for the primary purpose of swimming, diving, wading or recreational bathing. Swimming pool includes all appurtenant equipment, structures and facilities located within a common enclosure. A unit used in conjunction with the private practice of a physician or physical therapist is not a swimming pool."

The pool construction definition includes "all appurtenant equipment, structures and facilities located within a common enclosure". The pump house building is a structure or facility which includes appurtenant equipment within a common enclosure. Moreover, the pump house building is necessary to the swimming pool, as described in the Zoning Ordinance definition.

Specifically, the following annotated reproduction of Figure 2 of CBA-1383 Exhibit 33(a)<sup>105</sup> (Figure 100 herein) demonstrates the pump house building within a common enclosure of the pool and as a part of the pool. Moreover, the pool would not operate without the pump house building and the contents contained therein.

---

<sup>104</sup> See CBA-1383 Exhibit 35(b), § I; and COMCOR 51.00.01 Manual on Public Swimming Pool Construction.

<sup>105</sup> Aerial view of pool property (2006) facing overhead and obtained from DPS.

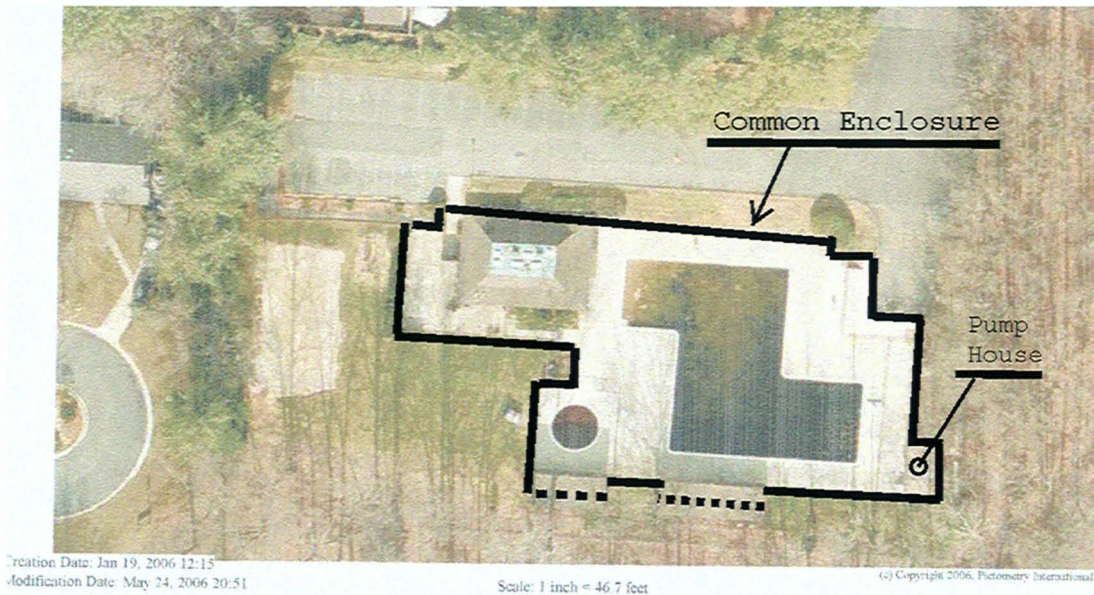


Figure 100.

The pump house building is not an accessory building to the pool, as asserted by Mr. Niblock, but rather the pump house building and all that it contains and houses are a part of the pool according to both § 59-G-2.56(a) of the Zoning Ordinance and the COMCOR definition of a swimming pool.

The Zoning Ordinance defines an accessory building as follows:

“Building, accessory: A building subordinate, and located on the same lot with, a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or common roof to the main building. In addition to any other meaning the word “subordinate” may have in this definition, on a lot where the main building is a one-family detached residential dwelling, except for an accessory agricultural building, subordinate means that the footprint of the accessory building is smaller than the footprint of the main building..”

The use of the pump house building is not “clearly incidental”<sup>106</sup> to the use of the land as a community swimming pool or to the use of, for example, the bath house as, without the pump house building and the equipment housed therein, the lot or site would not be operable as a community swimming pool.

<sup>106</sup> “Incidental” is defined by Webster’s II New Riverside University Dictionary (The Riverside Publishing Company, Houghton Mifflin Company (1984), p618) as “Occurring or apt. to occur as an unpredictable or minor concomitant” or “Of a minor, casual or subordinate nature.” (copy attached as CBA-1383-A Exhibit No. \_\_\_ (Exhibit BJS-129)).

Mr. Carlton Gilbert

March 7, 2011

Page 61

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Deck supporting shade structures/buildings and building below eastern shade structure/building

The deck supporting the shade structure/buildings and the building below the eastern shade structure/building are less than the required 25 ft. set back from the property line as required by §59-G-2.56(a) of the Zoning Ordinance and a variance should be required.

Mr. Niblock further opines in the letter dated March 3, 2011 that the existing shade structures are "accessory structures" and, as such, the second sentence of § 59-G-2.56(a) only requires a building setback from the property line of the minimum required for rear and side yard setback for the R-90 zone (i.e., 5 ft setback).

Without commenting on whether the shade structures/buildings are accessory structures, it is noted that the pool deck and building below the eastern shade structure/building – which is marked as a chemical storage area - are part of the swimming pool, according to the above-noted definition of Swimming Pool from the Manual on Public Swimming Pool Construction. The Zoning Ordinance reference to the "apron" being a part of the swimming pool is noted. The "apron" of a swimming pool is not defined in the Zoning Ordinance, the Manual on Public Swimming Pool Construction or the International Building Code (2009)<sup>107,108</sup>.

The deck under the shade structures/buildings and the building under the eastern shade structure are described in the Petitioner's 2010 Site Plan as being 20 ft. 5 inches (20'-5") and 20 ft. 3" (20'-3"), respectively, from the southern property line. As such, the deck and building below the eastern shade structure/building, which are included in the definition of the pool as appurtenant equipment, structures and facilities located within a common enclosure, are required to be setback from the southern property line by 25 ft according to § 59-G-2.56(a). Mr. Niblock's letter of March 3, 2010 is not believed to address these structural aspects of the 2010 Site Plan. A variance is believed to be required.

Driveway

The driveway is believed to not comply with at least §59-E-2.4 of the Zoning Ordinance<sup>109</sup>. Most specifically, the driveway is less than the required 20

---

<sup>107</sup> The most recent edition available at the Rockville branch of the Montgomery County Library.

<sup>108</sup> Ms. Scala-Demby stated in the April 30, 2010 Hearing that DPS relies on the "International Building Code" for further definitional support (page 45, line 3 of the Transcript) (CBA-1383-A Exhibit No. \_\_ (Exhibit BJS-112)).

<sup>109</sup> "Sec. 59-E-2.4. Access and circulation.

Each parking space shall have access to a street or alley open to use by the public via adequate interior aisles and entrance and exit driveways; provided, however, that where cars will

Mr. Carlton Gilbert

March 7, 2011

Page 62

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

ft. width for a combined driveway. The driveway of the originally approved special exception was 25 ft wide<sup>110</sup>. The driveway width has been modified since the original grant and consideration of this significant safety issue by the Technical Staff is requested.

### Property Address

The Special Exception Inspection Report of June 29, 2009<sup>111</sup> recommends

“contacting the MD State Dept. of Assessments and Taxation to correct/clarify the premise address (identified as “6808 Tilden La” on the Real Property Data Search) to reflect the address currently in use (6806).”

The Petitioner’s December 15, 2010 Plans refer to the property as being located at 6806 Tilden Lane. The Petitioner’s December 21, 2009 Plans identify the property as being located at 6808 Tilden Lane. M-NCPPC and SDAT Taxation on-line records, the Certificate of Final Inspection and Occupancy dated May 7, 1964, the Deed of trust on the property dated December 30, 1991, and a Security Agreement and Financing Statement dated December 30, 1991 recorded in the land records, for example, identify the premise address as 6808

---

be parked by attendants, at least 50 percent of all parking spaces shall have direct access to interior aisles, and entrance and exit driveways.

59-E-2.41. Driveways.

(a) Interior aisles are vehicular travelways with parking stalls along the sides.

(b) Entrance and exit driveways are vehicular travelways, without parking stalls along the sides.

Driveways for one-way movements shall be at least 10 feet in width to allow safe and expeditious movement of vehicles. Entrance and exit driveways shall be separately provided wherever possible. If entrance and exit driveways are combined, the combined driveway shall be not less than 20 feet in width. Aisles designed to accommodate one-way movements shall have the following minimum widths based on the configuration of the adjacent parking spaces: Perpendicular, 20 feet; 60 to 75 degrees, 18 feet; 45 to 59 degrees, 16 feet; parallel, 10 feet. Aisles designed to accommodate 2-way movements shall have a minimum width of 20 feet.

59-E-2.42. Walkways.

In addition to all required parking spaces and driveways, pedestrian walkways or sidewalks shall be provided in all off-street parking facilities where necessary for pedestrian safety. Such walkways and sidewalks shall be protected from vehicular encroachment by wheel stops, curbs or other methods approved by the director or planning board.

59-E-2.43. Separation from parking spaces.

All parking spaces shall be separated from sidewalks, roads, streets or alleys by curbing. All roads, streets, alleys, sidewalks and other public rights-of-way shall be protected from vehicular overhang by wheel stops, curbs, spacing between the right-of-way line and the parking area or other method approved by the director/planning board.”

<sup>110</sup> See CBA-1383 Exhibit 11.

<sup>111</sup> CBA-1383 Exhibit No. 18.

Mr. Carlton Gilbert

March 7, 2011

Page 63

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Tilden Lane<sup>112</sup>. The 6806 Tilden Lane address does not exist in the M-NCPPC and SDAT Taxation on-line records.

The consistent use of the correct property address of the premise is in the best interests of the neighborhood in obtaining information and keeping informed of activities on and relating to the property. The Technical Staff is requested to facilitate and/or require determination and use of a single address for the premises.

### **Conclusion**

The 1963 Opinion of the Board of Appeals in CBA1383 included very few detailed conditions of the Special Exception. What was not specific has, over the years, been left to the interpretation of the Pool's Boards. A more definite statement of operation, and detailed site plan, lighting plan and landscape plan should be required along with a plan to foster communication between the TWRA membership and neighbors, to bring the Special Exception into compliance with the general landscape, streetscape, pedestrian circulation, noise and screening requirements, for example, of the Montgomery County Zoning Ordinance and other applicable rules and/or regulations as required by DPS or M-NCPPC and state and local law and regulations.

The process of educating myself regarding Special Exceptions of other swimming pools has led me to the conclusion that the creation of a precise statement of operations, site plan, landscape plan and lighting plan has been extremely helpful in producing a more harmonious relationship between other Montgomery County community pools and their neighbors. It is my sincere hope that my neighborhood will be afforded the same opportunity through the process of a thorough review at the direction of the Board of Appeals.

I request advance notification of future worksessions and/or hearings relating to the TWRA Special Exception and an opportunity to be heard. I also request a future opportunity to submit evidence in support of the current and recent past nature, character, and intensity of use of the property by Tilden Woods Recreation Association.

Thank you for your consideration.

---

<sup>112</sup> See for example, CBA-1383 Exhibit No. 33(z).



Mr. Carlton Gilbert

March 7, 2011

Page 64

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Sincerely,

  
B. J. Sadoff

6804 Stonewood Terrace

Rockville, MD 20852

(T) 703-816-4091

(F) 703-816-4100

Attachments:

Figure 84 (8½" x 11" copy).

Figure 85 (8½" x 11" copy).

BJS-96: Opinion in Petition of Forest Knolls Pool, Inc. Case No. 2389 (May 28, 1968).

BJS-97: January 24, 2011 Letter of Kevin Chinnia, Manager, Public Health Services – Licensure and Regulatory Services.

BJS-98: Corrected Opinion in Petition of Little Falls Swim Club Case No. S-289-B (June 8, 2005).

BJS-99: Opinion in Petition of Country Glen Club, Inc. Case No. S-61 (April 14, 1972).

BJS-100 Opinion in Petition of Damascus Recreation Association, Inc. Case No. S-545 (May 4, 1977).

BJS-101: Opinion in Inverness Recreation Club, Inc. Case Nos. S-506 and A-310 (October 6, 1976).

BJS-102: Opinion in Petition and Appeal of Mill Creek Towne Swim Association, Inc. Case Nos. S-809 and A-869 (January 27, 1982).

BJS-103: Opinion in Petition of West Hillandale Swim Club, Inc. Case No. CBA-1193-A (December 19, 1984).

BJS-104: Petition of West Hillandale Swim Club, Inc. dated April 27, 2004 submitted by Ms. Soo Lee-Cho in CBA-1193 on behalf of the Petitioner.

BJS-105: Opinion in Petition of Wheaton Woods Swimming Pool Corporation Case No. 862 (April 4, 1960).

BJS-106: Opinion in Petition of Wheaton Woods Swimming Pool Corporation Case No. 1564 (May 20, 1964).

BJS-107: Opinion in Petition of Northwest Branch Recreation Incorporated Case No. 1079 (July 10, 1961).

BJS-108: Opinion in Petition of East Gate Recreation Association, Inc. Case No. S-596 (February 15, 1978).

BJS-109: Opinion in Amendment to the Petition of Olney Mill Swim Club, Inc., Case No., 2781 (June 17, 1975).

BJS-110: Opinion in Petition of M&S Development Corporation Quince Orchard Swim & tennis Club, Case No. S-455 (March 24, 1976).

Mr. Carlton Gilbert

March 7, 2011

Page 65

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

- BJS-111: Opinion in Petition of Stonegate Swim Club, Inc., Case No. S-526 (January 19, 1977).
- BJS-112: Transcript of Board of Appeals Hearing of April 30, 2010.
- BJS-113: 2006 Pool Schedule.
- BJS-114: 2007 Letter from Mr. Dicker (TWRA President) to TWRA Members.
- BJS-115: Transcript of Board of Appeals Worksession of July 8, 2009.
- BJS-116: 2001 Web cache of TWRA hours.
- BJS-117: 2011 TWRA web site .
- BJS-118: Opinion of Petition of Regency Estates Swim Club, Inc. Case No. 2007 (July 19, 1966).
- BJS-119: "Noise Control – Outdoor Sound Propagation" J.S. Lamancusa, Penn State, 7/20/2009.
- BJS-120: Transcript of July 21, 2010 Board Of Appeals Worksession.
- BJS-121: Petitioner's October 6, 2009 letter with draft Statement of Operations, renovated pump house design and Landscape Plan.
- BJS-122: "The Luxmanor Greensheet" June 2010.
- BJS-123: "MCSL MEET MANAGEMENT HANDBOOK" (2010).
- BJS-124: "Virginia Swimming Meet Safety Procedures" Steve Woolfolk, Safety Chair, Virginia Swimming, Inc., March 2009.
- BJS-125: "Seattle Parks and Recreation Summer Swim League Parent Packet" February 1, 2010.
- BJS-126: Kowalski v. Lamar, 25 Md.App 493, 498, 334 A.2d 536, 539 (Court of Special Appeals of Maryland 1975).
- BJS-127: Opinion in Petition of Eldwick Homes association, Inc. Case No. S-388 (October 22, 1975).
- BJS-128: Opinion in Petition of Olney Mill Swim Club, Case No. CBA-2781 (September 20, 1996).
- BJS-129: Webser's II New Riverside University Dictionary (The riverside Publishing Company, Houghton Mifflin Company (1984), p618

cc: (with noted attachments (double sided collection))

Shahriar Etemadi

M-NCPPC

Montgomery County Planning Department

8787 Georgia Ave

Silver Spring, MD 20910

Nkosi Yearwood

M-NCPPC

Montgomery County Planning Department

8787 Georgia Ave

Silver Spring, MD 20910

Mr. Carlton Gilbert

March 7, 2011

Page 66

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Ed Axler

M-NCPPC

Montgomery County Planning Department

8787 Georgia Ave

Silver Spring, MD 20910

Steve Findley

M-NCPPC

Montgomery County Planning Department

8787 Georgia Ave

Silver Spring, MD 20910

Martin L. Grossman

Director

Office of Zoning and Administrative Hearings

Montgomery County Board of Appeals

Office of Zoning and Administrative Hearings

100 Maryland Avenue

Suite 200

Rockville, MD 20850

Soo Lee-Cho, Esq.

Miller, Miller & Canby

200-B Monroe Street

Rockville, MD 20850



Figure 84; 2001-03-07 BJS letter to M-NCPPC  
CBA-1383-A Exhibit No. \_\_



9539 B2

Figure 84; 2001-03-07 BJS letter to M-NCPPC  
CBA-1383-A Exhibit No. \_

via USPS

March 17, 2011

Mr. Carlton Gilbert  
Technical Staff - Development Review Division  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Mr. Gilbert,

Attached for your consideration with the undersigned's letter of March 7, 2011 is an inspection report received March 14, 2011, from the Div. of Licensure and Regulatory Services.<sup>1</sup> The attached is based on an inspection performed March 1, 2011 and is understood to highlight that the fence fails to meet the height requirements, that the fence in at least the south west corner and along the western edge of the property is less than 6 ft. in height, and that a dedicated continuous perimeter fence is required. The attached is understood to have been transmitted to the Petitioner by the Div. of Licensure and Regulatory Services March 9, 2011.

Further, the letter of March 7, 2011 includes an inadvertent and unintended omission in the properties listed in requested conditions 14(a) and 14(e) (pages 11, 17 and 18). Inclusion of 6810 Tilden Lane is also requested.

Thank you for your consideration.

Sincerely,



B. J. Sadoff  
6804 Stonewood Terrace  
Rockville, MD 20852  
(T) 703-816-4091  
(F) 703-816-4100

Attachment:

---

<sup>1</sup> Copy attached as CBA-1383-A Exhibit \_\_\_ (Exhibit BJS-130). See page 43 (3. Fencing) of the March 7, 2011 letter.

Mr. Carlton Gilbert

March 17, 2011

Page 2

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

BJS-130: email of March 14, 2011 from Mr. Jack Mohr, Environmental Health Specialist, Montgomery County HHS, License and Regulatory Services, and attached Report of March 1, 2011 inspection.

cc: (via USPS - with noted attachment (double sided except for OZAH copy))

Shahriar Etemadi  
M-NCPPC  
Montgomery County Planning  
Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Steve Findley  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Nkosi Yearwood  
M-NCPPC  
Montgomery County Planning  
Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Martin L. Grossman  
Director  
Office of Zoning and Administrative Hearings  
Montgomery County Board of Appeals  
Office of Zoning and Administrative Hearings  
100 Maryland Avenue  
Suite 200  
Rockville, MD 20850

Ed Axler  
M-NCPPC  
Montgomery County Planning  
Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Soo Lee-Cho, Esq.  
Miller, Miller & Canby  
200-B Monroe Street  
Rockville, MD 20850

**From:** Mohr, Jack  
**To:** B. J. Sadoff;  
**CC:**  
**Subject:** Fence Inspection at Tilden Woods Pools.  
**Date:** Monday, March 14, 2011 9:38:10 AM  
**Attachments:** TildenWoodsSiteVisit..doc

---

Please see the attachment regarding results from March 1, 2011 site inspection.

<<TildenWoodsSiteVisit..doc>>

Sincerely,

Jack Mohr

Environmental Health Specialist

Montgomery County HHS

License and Regulatory Services

255 Rockville Pike, Suite 100

Rockville, Maryland 20850

(240)777-3830

CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of the intended recipient(s). The information contained in this message may be confidential information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.



Tilden Woods Swim / Rec.

Date of Inspection - March 1, 2011

Purpose: To evaluate condition of existing perimeter fence.

Route taken around property.

Starting point is the South East corner of the inner high fence (also would be the South West corner of the pump room.). Circuit went clockwise around the property, following all fences on the property.

Note: Measurements are from the outside of the chain link fence. Several measurements along the entire perimeter and interior fences were recorded. Photo documentation was included in this survey.

### **Main Issue**

At the time of inspection, a continuous high perimeter barrier is not in place.

The facility must decide what barrier will be the required dedicated perimeter fence prior to applying for a 2011 Operating Permit. The facility must submit a drawing to scale of the facility's property with the perimeter fence clearly marked. After reviewing and approving the drawing, a field inspection will determine approval of the perimeter fence.

### **Areas of Concern:**

#### **1. SOUTH SIDE;**

A. From the South East Corner of the main pool shade structure extending South (downhill) to South East corner of the existing interior fence continuing West to the South West corner of the existing interior fence, then continuing North (uphill) to the South West corner of the Tot pool shade structure.

This area of the fence does not meet the height requirement in most places. The existing barbwire and brackets on top of the existing chain link fence is in poor repair or missing.

Note: From the South West corner of the existing fence to another existing fence on the South side is a gap of several feet. See Main Issue above.

The existing fence at the North West corner of the Tot shade structure and continuing North to the locker rooms (including a gate) is approximately 48 inches in height.

The exterior high fence, starting at the South West corner of the interior fence (behind the Tot shade structure), continuing West to the South West corner at Stonewood Terrace, the fence measures approximately 64 inches in height in this corner. The fence rises up from this corner both East and North. These sections of fence do not meet the height requirement.

## 2. WEST SIDE.

Approximately half of the West side fence is covered in brush. The fence in the brushed area was measured in three locations roughly equal distances apart. Fence height measured from 65 inches to 72 inches. The density and height (well over 7 feet) of the brush meets the requirement for a barrier and no alteration of the fence is required unless the vegetation is removed.

The section of the fence that is not covered in brush and extending South to the South West corner at Stonewood Terrace ranges from 64 inches to 72 inches. This section of the fence needs to meet code.

## 3. NORTH SIDE

The North West corner of the fence continuing East toward the East end of the locker rooms measures approximately 65 inches in height (only where the asphalt ramp is located). This section needs to meet code requirements. The existing Emergency Gate does meet code requirement.

The remaining North side of the fence to through both inside and outside corners to the North East corner does not require any height alteration. From the "outside" corner continuing East to the North East corner, the fence section at the bottom near the retaining wall and stairs has an opening greater than 4 inches.

## 4. EAST SIDE

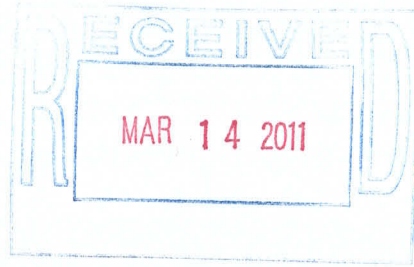
No alteration of the existing fence is required.

## Conclusion:

A dedicated continuous perimeter fence is of primary importance. The existing fence is in good overall condition. The locations noted above, should be relatively easy to correct and are required if used as the perimeter fence.

March 9, 2011

✓ To: Mr. Carlton Gilbert  
Technical Staff - Development Review Division  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910



From: Suzanne Keller *Suzanne Keller*

Re: Technical Staff Review of Tilden Woods Recreation Association, Special Exception CBA-1383-A Major Modification filing

Introduction:

In February 2009 a presentation for a renovation and expansion of the pool's facility was made at the Tilden Woods Recreation Association annual membership meeting. This presentation and, further, review of the architectural plans [ CBA-1383 Exhibit # 33(b) ] provided by the pool's president, Mr. Ross Dicker, led me to make inquiries to the Department of Permitting Services (DPS). DPS waited until the pool was open for the season, and then scheduled an appointment to inspect the facility. DPS issued a Special Exception Inspection Report dated June 29, 2009 [ Exhibit18 ].

The case file (CBA-1383) reflects the process, including setting aside an official complaint [Board of Appeals worksession July 21, 2010 Tr pages 16 - 18] and request for a public hearing, regarding the matter of CBA 1383, Tilden Woods Recreation Association, (TWRA). The Board of Appeals has requested that Tilden Woods Recreation Association file a request for a **Major Modification**. They referred the matter to OZAH for a public hearing (scheduled for May 6, 2011) on the Major Modification filing and, it is my understanding this requires input from the MNCPP-C Technical Staff prior to the hearing.

While the case file includes my comments and suggestions [Exhibit 21, 29, 47, 74] for a Statement of Operations [Exhibit 74 and other submissions given to petitioner during meetings with Mr. Martin Klauber, People's Council], and the Hearing Examiner enumerated my concerns at the April 30, 2010 hearing, the Hearing Examiner's report of June 28, 2010 encourages further input from the neighbors [Hearing Examiner Report June 28, 2010 footnote 17 page 44]. However, no input was sought by the petitioner from Mr. Evans, Mr. Sadoff or me in the time between June 28, 2010 and December 30, 2010, the date of the petitioner's major modification filing submission.

Since 2005, my communications directly with pool representatives including a letter written to the general membership in 2007 [Exhibit 23] have been ignored or worse, promises have been made to me and others (regarding amplified noise, late/expanded hours and maintenance prior to 9am on the weekends, removal of the white pines along the Kogok property, draining the pool onto park property and other maintenance issues) and then broken. As noted previously, in 2009

I hoped to begin a process which would address and fix the issues at hand. That was 23 months ago.

It is my understanding that the technical staff reviews inherent generic physical and operational characteristics associated with a given use (in this case, the use is an outdoor community swimming pool) to create an evaluation standard (as was the case of our other neighborhood pool, Old Farm, CBA 1495, the characteristics were lighting; vehicular trips by staff, members & guests; and noise. Additionally, no neighbor complaints were noted in the Old Farm Pool case.).

In reading the histories of many Special Exception community pool requests for modifications, I have been encouraged by pool communities that actively change their behaviors and address physical and operational characteristics which impact negatively upon the residential neighbors. Early in the pool season of 2009, petitioner was issued an Inspection Notice citing violations yet aside from changing the Sunday opening hour from 10:30 a.m. to 11:00 a.m. for the remainder of that season and the 2010 season they continued to operate with self entitlement instead of with authorization from the Board of Appeals (with the exception of the lock-in where they went to the BOA with a request for Administrative modification and were denied). They operate with amplified noise and extended hours. They open the facility to non-members. They serve alcohol at day and evening events. There are still bare bulbs on tall light poles. Landscape and fencing requirements are neglected. Nevertheless, my goal is not punitive except to interject that those who do not learn from history are bound to have it repeated. My goal is to move forward.

I hope to highlight the inherent but adverse effects and non-inherent physical or operational characteristics and their adverse effects of the use on nearby properties (such as my property). I was one of three neighbors who requested and attended a meeting, February 11, 2011, with members of the technical staff, and in follow up to that meeting, I respectfully submit to the Technical Staff, my opinions, requests and suggestions, specific to the petitioner's filing, as follows:

Address of subject property: There is still a discrepancy in the address which made finding records regarding CBA-1383 challenging. Records and street signage should be consistent and accurate. In 2009, it was my understanding from DPS that Park and Planning would be able to supply the correct street address assignment for this property. DPS records (1963 and 1968 building permit applications) show the facility address as 6808 Tilden Lane; however the building permit issued 10/21/2003 designate the street address as 6806 Tilden Lane. The petitioner has used both street numbers in 2009 and 2010. The sign at the driveway entrance says 6806.

Conditions of the Site Plan: I appreciate the additional information contained in the March 4, 2011 memorandum from petitioner identifying "improvements" to be maintained, as I would request conditions of the current site plan, which are different from the original site plan, be specifically enumerated in text. I assume the conditions of the current site plan are to be validated by their very presence (or, for example, in the case of mature trees - their absence) and it is more appropriate to have an itemized "retention" list for clarity. (In an administrative modification request of West Hillandale Swim Club, CBA-1193, brought to the BOA in 2004 by

petitioner's attorney, Soo Lee-Cho, retention of 9 items was enumerated, and it is pertinent to note, the speakers which were approved were limited to purposes of safety and security).

Some conditions may be non-inherent but not adverse; however, some conditions may be inherent and adverse or non-inherent and adverse. Scrutiny is warranted. For example, in this case, if the petitioner's vending machine is to be retained or validated on petitioner's site plan, screening is requested so that I am not looking at the machine, with or without its lights on, from my property or inside my home - from my kitchen window.

If the dumpsters (on site plan and pictured in petitioner's filing) are to be retained, I would ask for screening and containers with non-metal lids which are quieter when they are dropped into the closed position.

Regarding the proposed changes to the shade structures, the petitioner's architects report revealed, *wood shade structures are badly weathered and leaning indicating structural bracing flaws. They should be braced to prevent injury. This will require the services of an architect and a structural engineer.* If the only plan is to remove the roof from the shade structure and leave the structural bracing, for safety and practicality, I would request a structural engineer's report and, of course, DPS review before implementing this plan. Additionally I would ask for further review to make sure that this remaining wall/railing is up to current code given the drop on the back side of both structures and the additional fact that one shade structure is in a fenced area designed for small children.

With respect to railings, while there is a hand rail placed on the stairwells going up to the additional deck on the north east area of the pool (added in 2004 or 2005), the metal bar and rope "railing" along the added concrete deck should also be inspected for safety. See B.J. Sadoff's letter of March 7, 2011 page 28, Figure 85 for a photograph of the railing (which does not show the elevation of the deck, believed to be at least three stair steps above the main deck).

There is a pedestrian gate in the SE corner of the pool. While I do not support use of this gate for early entry into the pool by swimmers, coaches, staff or members, and I do not encourage walk off parking from Tilden Woods Park, especially prior to the stated hours of operation [Hearing Examiner Tr 4/30/10 page 118 lines 13 – 21, page 120 lines 15 – 25, page 121 lines 1 – 17 and Exhibit 78 Ship letter explaining rationale for violating Hearing Examiner's order/reminder regarding hours of operation], there could be a coordinated partnership between the pool and the park for use of this gate as the pool's pedestrian entrance. M-NCPPC may require the petitioner to remove the poured aggregate concrete outside the fence/gate and replace it with a safe and appropriately placed path.

Changes to the entrance fence/gate would require working around two mature white pines and established shrubs. Petitioner must think this can be accomplished without irreversibly disturbing the landscape in place. I think this could also be accomplished around the entire perimeter of the facility with the exception of the property line between the pool and 6801 Stonewood Terrace where the stockade fence is still in place, and the end of the Stonewood Terrace cul-de-sac, north of where the white pine came down. This is the only area where there

is adequate landscape screening for residential property owners. However, the stockade fence is in disrepair in many places and Mr. and Mrs. Kogok have asked for the removal of the white pines.

Does petitioner plan to remove mature trees where none are shown (in the SW corner area) on the site plan filed with OZAH but *are shown* on the site plan filed with Park and Planning (filing for their Forest Conservation Exemption approval)? This would be in keeping with their architects report, page 25[Exhibit 33(b)] which states, "the established trees are to be changed", but would be strenuously objected to by me.

Does petitioner plan to remove white pines which exist on the northern perimeter, between the pool and a currently vacant house, but which are not identified on any of the current site plans? I'm sure Mr. Kogok, who was promised removal of 3 white pine trees replaced with 7 arborvitae, 7 – 8 ft. tall, and feels "duped" now that this is not offered by petitioner, would be interested in this turn of events. [12/30/09 letter Exhibit 31 and 10/17/10 letter Exhibit 87]

Finally, what has happened to the speakers mounted on the bath house and larger shade structure; have they been removed?

Petitioner suggests that to the extent that comments question the accuracy of what is reflected as the existing conditions on the site, petitioner would take under advisement those items and make changes to the site plan as necessary *as directed by DPS*. See [Tr 4/30/10 page 15 lines 17-22]. Shouldn't the Hearing Examiner and the Technical Staff be able to rely on the accuracy of a site plan without further DPS review and direction? If this is accurate and DPS is the only entity that can activate the pool to address inaccuracies on the site plan, then am I, in the midst of the Major Modification filing, supposed to take my comments directly to DPS? Consistency and clarity in presentation of petitioner's plans to various branches of review, licensing, permitting or to the neighbors is recommended.

Lighting Plan: "At the very least, the Board should ensure that there is a suitable statement of operations and appropriate lighting, which will eliminate unacceptable adverse effects on the neighbors", stated Mr. Grossman in his June 28, 2010 Hearing Examiner Report, page 44. Further, in the hearing proceedings of April 30, 2010 [Tr 4/30/10 pg 182 lines 1-8 & 17-20] questioning Ms Ship, petitioner's Board President, Mr. Grossman stated, "Ms Ship, have you seen Exhibit 44(j), this is the lighting exhibit showing the glare from--" Ms Ship replied, "Yes". Mr. Grossman continued, "This is showing glare from lights in the swimming pool on to the Sadoff's property. And I would hope that you would run back after this and have your maintenance people put a shield on those lights that are causing that problem." And, speaking generally to the hearing participants, "You don't know for sure, right. But they should have a lighting expert just take a look at that and make sure that that stops just as a neighborly thing". While the pool is currently closed, spring maintenance time is approaching and to date, shielding has not been added to the bare bulbs on several light poles. Is it possible, as an interim measure, to just instruct the petitioner to remove the light bulbs from these light poles?

In addition to the unshielded lights on poles, I am disturbed by the light from the vending machine previously noted. This light is not turned off in the evening during the pool season when the machine is plugged in and in use. In the winter, the bright color of the vending machine, the large "recycling bin" blue frame of an oversized umbrella stand, and the equally brightly colored murals on the bath house walls are easily noticed from my property, my kitchen and dining room windows. These design modifications no longer reflect the architecture that one would expect to find in a residential neighborhood. Tight, evergreen screening is requested.

In the petition of Forest Knolls Pool, Hearing held May 16, 1968, the petitioner had candy and soft drink vending machines and requested a snack bar. Snack bar would be located at least 75 feet from any property line, ..."that they would abide by the County Health regulations"..." However, there was testimony from adjoining property owners that the subject property had not been well maintained and the screening had been neglected. "The petitioner had started rectifying the objections by installing an additional anchor fence 6 feet 6 inches high and has hired a maintenance company to take care of the pool and the surrounding grounds." The request was granted subject to conditions: "1. The petitioner shall engage a responsible landscaping firm to take care of the landscaping and maintenance of the subject property on a year around basis, such maintenance to include leaf and trash collection, fence mending and trimming and care of shruberry and trees. 2. There shall be no parking of motor vehicles on the streets in the area of the pool by users of the pool. Parking spaces to accommodate not less than 67 cars shall be provided and each such space shall be clearly marked. 3. The bath house and parking area shall be screened from the street by the planting of evergreen shrubs not less than 3 feet apart and at least three feet high at the time of planting. 4. Within 60 days from the date of this resolution, petitioner shall furnish to the Department of Inspection and Licenses and the Board an affidavit of compliance with Conditions 2 and 3 and a copy of the maintenance contract referred to in condition No.1." The subject property, consisting of 2.302 acres, was granted a Special Exception in 1962. It is similar to Tilden Woods Pool, both having been granted a membership of 350 families and both having similar hours of operation, screening and fencing requirements conditions in their original grants. In 1972 Forest Knolls Pool came back before the Board of Appeals, requesting a modification to exclude the present screening requirements regarding the erection and maintenance of the fence along the northwestern boundary. "There was testimony that a wooden fence had been taken down, but that there are trees along the property line and a chain link fence." An adjoining neighbor complained. "the request for the Board to accept the existing chain link fence and new evergreen planting as satisfying the screening requirements of the previous grant is denied; instead, the Board directs the petitioner to erect a stockade type fence of not less than six feet in height on the outside of the existing chain link fence closest to the residential properties as close as possible to the chain link fence for the full length of Lots 1 and 2, Block N."

While petitioner did not stipulate a color for the proposed additional umbrellas, a muted earth tone should be selected so that it blends in with the natural colors of the wooded area of the park – particularly in the winter when the foliage is off the deciduous trees.

Traffic and Parking: The petitioner is aware of and in agreement with [Exhibit Architectural report 33(b) & "FAQ 2009" Exhibit 33(l)] the neighbor's complaints of a narrow and dangerous driveway which does not allow two way traffic in and out of the facility. Parking near the pool's

driveway on Tilden Lane limits safe entry and exit for pool patrons and limits safe entry and exit into neighbor's property. Any signs posted will have to be approved by DPS; but more important than a sign is a protocol regarding safety measures which pool patrons and members must abide. Therefore I also suggest the "dropping off and picking up" policy be added to the Rules and Regulations of the pool and be a condition brought forward to parents when they sign swim team consent forms.

Even last summer (2010) there were children being dropped off or picked up at the entrance and there were several occasions when I witnessed children "set up" at the top of the driveway (with and without parent supervision) holding bake sales. The children were appealing to foot traffic, drivers entering and leaving the pool, as well as to vehicles traveling in the general traffic of Tilden Lane - waving signs and calling out to cars passing by the pool entrance.

The neighbors who lives directly across the street from the pool entrance are still actively seeking remedy from the danger presented by traffic and parked cars along Tilden Lane when the pool's off street parking lot is full. Typically 0 -1cars are parked in front of each house on Tilden Lane between Parkedge and Farmland Drive and Old Stage between Stonewood Lane and Tilden Lane. In the summer of 2009 the following data was collected to quantify the pool's overflow of cars onto the neighboring streets: June 13,2009, morning "Time Trials" (represents just Tilden Woods Swim Team): 40+ cars parked on Tilden Lane; June 16, 2009 7:00 p.m.: over 100 cars on Tilden Lane, Stonewood Lane, Old Stage and Parkedge; July 1, 2009 afternoon "B" Meet 94 cars; July 15, 2009, 7:00 p.m. "B" Meet and a baseball game in the park: 140 cars; July 11, 2009 10:30 a.m."A" Meet: 63 cars on Tilden Lane.

In early July, 2009, park police acted in response to "pool parking" vehicles in Tilden Woods Local Park by posting "Parking for Park Patrons Only" signs in their M - NCPPC lot. At the fund raising event open to the general public, of June 2010, the pool reportedly rented the park facility so that it could use their parking lot. Perhaps this is a plan which could be implemented for all swim meets or membership activities. I propose the pool work with the Department of Recreation and M-NCPPC. The petitioner can rent the recreation center and ball field for a 4 hour block which will entitle them access to the 26 parking spaces.

Drivers, whose destination is Tilden Woods Pool, push the parking standards ( parking should be 5 ft. from a driveway, 15 ft, from an intersection and 20 ft. from a fire hydrant) to fit this many cars into these neighborhood streets. I have frequently observed cars parking in front of the fire hydrant between the pool property and its neighbor, 6810 Tilden Lane and in the posted "No Parking" areas on either side of the pool's entrance (which speaks to the effectiveness of signs). Additionally, since the pool's driveway is not the typical length of a residential driveway in this neighborhood, drivers leaving the pool can build up acceleration and speed. Without a stop sign at the gate (a stop sign would be a device similar to that used at our local schools and park), and the previously detailed visual impairment, drivers head out onto the sidewalk without stopping to look for pedestrian traffic. I know this from personal experience and proceed cautiously, but other pedestrians may not.

Recently (approximately within the last 6 months), parking restrictions have been implemented on Tilden Lane. Parking is now prohibited on the south side of Tilden between Old Stage Road



and Old Georgetown Road, further limiting available parking on neighborhood streets. Added "exchange days" with members of other community pools (Old Farm and Windemere) increase vehicular traffic and parking needs. Swim team events, pool parties, the fund raising event, and exchange days all increase vehicular traffic to and from the pool and create parking needs well beyond the capacity of off street parking provided by the pool. A maximum number of twelve employees, stipulated to in petitioner's Statement of Operations, takes twelve parking spaces from the membership. More than one pool has had to manage the Board of Appeals decision not to allow pool parking on public streets. In the 1975 petition of Rock Creek pool, a condition offered by the Board of Appeals stated, "Club members shall park their cars only on club property so long as spaces are available on the club parking lot. The club shall devise a system to enforce this requirement."

Suggestions: Implement Montgomery County Swim League ([www.mcsl.org](http://www.mcsl.org) Meet Management Handbook page 50) parking suggestions (one side of the street only) and further, park only on streets with sidewalks (Tilden Lane and Old Stage) during pool events. Make neighborly parking a priority by assigning a parking/traffic guard at the street entrance during swim team events or membership events, keeping both sides of the street within the entrance area, which is on the crest of a slight hill, a "No Pool Parking" zone! Review policies which have been implemented by other community (and Special Exception) pools such as Little Falls (S-298-B) regarding street parking. I agree with the concept of adding a pedestrian gate but not to the exclusion of widening the driveway for vehicular traffic and not to the exclusion of adding landscape screening inside the fence on the northern perimeter where three homes adjoin pool property. (See previous note about gate in SE corner under Conditions of the Site Plan)

#### A General Word About Pool Operation Safety:

2/22/11 & 2/23/11 by email from  
Jack Mohr  
Environmental Health Specialist  
Montgomery County HHS  
License and Regulatory Services  
255 Rockville Pike, Suite 100  
Rockville, Maryland 20850  
(240)777-3830

"Regarding lifeguards at licensed swimming pools, any time there are persons within the pool enclosure (inside the perimeter fencing) that are not involved with operational aspects of the swimming pool (repairing or servicing equipment, construction, cleaning, etc.) lifeguards are required. These lifeguards must have their current certifications (their certs) with them, be appropriately dressed, and be actively watching their assigned areas. They are not to be in the water unless actively engaged in a rescue (once in the water, a lifeguard becomes a bather or swimmer – not a lifeguard). These requirements usually preclude a swim coach from being a "lifeguard on duty".

There must be an adequate number of lifeguards, stationed as required when there are bathers / swimmers in the water. If a pool area is being used for a private party, the requirement is still in effect.

#### Mr Mohr further states:

The lifeguard requirements are in force during swim team practice or meets.

## **The often heard excuse that the pool is “not open to the public” is a fallacy.**

Lifeguard ratios. The one to fifty is a best case scenario, due to pool layout, different ages, abilities, activities, etc. this ratio is usually much smaller. There is a catch all phrase that says in part – enough lifeguards to adequately (safely) watch the pool. There are different ratios that are required for different situations such as children’s camp group or swimming lessons or therapy.

Water testing / time. No swimmers / bathers are allowed into the pool prior to the pool operator testing the water and making sure the water chemistry is within parameters (Chlorine and pH usually). The ½ hour requirement comes from the State Code (COMAR) and specifically refers to pools that have an automatic controller (a small computer that constantly monitors and adjusts the pool water as needed. Montgomery County’s Code does not “give credit” or make allowances for an automatic controller, the pool water must be tested at least once an hour when in operation. Testing the water a half hour prior to allowing the swimmers to enter the pool would allow the operator to adjust the controller / pool water chemistry in that 30 minute time span. However, the water would need to be checked again after adding any chemicals to the water and allowing the pool water to evenly distribute the chemicals. In Montgomery County, IF the water is tested just prior to allowing persons into the pool, AND the chemicals are within parameters, the pool operator ensures water is safe to enter right away. Any test is simply a “snapshot in time”. The pool water can change extremely fast due to environmental conditions (Bright sunlight, heat, rain, bather load, filter capacity, etc.). If the pool operator finds the chemicals out of parameters, they must not allow swimmers to enter the water until the particular violation is resolved.

Montgomery County’s Executive Regulations became effective in 1971 while the State (COMAR) became effective in 1997. While most of MC’s regulations are at least as restrictive as the State (and sometimes more), not all are. Montgomery County’s Executive Regulation Number 61-91 deals with pool construction and number 4-95AM deals with pool operation. These items along with COMAR 10.17.01 are the regulations we enforce.” (Emphasis added)

In 2007 Tilden Woods Pool was cited by HHS for not having a life guard on deck when the pool was open. When Ms Ship spoke of granting swim team and coaches access to the pool for warm ups in her June 24, 2010 letter [Exhibit 78] she was reiterating the fallacy which Mr. Mohr speaks of. Additionally she was allowing swimmers into the water contrary to COMAR regulations which requires pool water testing prior to allowing persons into the pool.

### A General Word About Swim Team:

Tilden Woods Recreation Association has a swim team which participates with the Montgomery County Swim League – a league dedicated to summer swimming. Swim teams, like dive teams, water polo teams, water aerobic classes, etc. are not inherent to community pools. At least two Montgomery County special exception pools, Windemere and Greencastle Lakes, do not have swim teams. Some teams in MCSL are associated with Montgomery County Department of Recreation Pools (Bethesda, Upper County) and another, Rockville, is a city of Rockville team. Some swimmers swim all year round while others only participate during the summer. While I do not disagree there are wonderful benefits summer swimming provide to kids, those benefits do not make a swim team, by zoning definition, an essential component or characteristic of a community pool. Swim team and all of its activities are not intrinsic; Swim team is not a fundamental nature of a pool. It is not inherent. See additional comment regarding swim team under Memorandum March 4, 2011.

### Advanced Swimmer Warm Up:

Based on review of league material, I think Montgomery County Swim League does everything it can to provide similar parameters and rules for its swim meets, its league teams and its

swimmers. I cannot find anywhere in the league documents where it encourages advanced swimmers to get in an additional warm up in their own pool before the general warm ups offered at a meet. I cannot find anywhere in their guidelines and handbooks which correlates potential athlete injury to a lack of 6 a.m. warm up.

## 2010 MCSL OFFICIAL'S GUIDE

### Contents

Introduction .....	1
Warm-up Procedures .....	1

#### **Introduction**

*Swimming officials ensure that swimmers may swim in a uniformly fair competitive environment. To do this, officials must know and understand the rules. The **Referee** is the final arbiter of all problems or protests that involve judgmental matters concerning compliance of the swimmers and other officials with the technical rules. The **Starter** is the only official who directly interacts with the swimmers. **Stroke and Turn Judges** have the authority to disqualify swimmers for rules violations that they observe. It is essential that their decisions be correct and impartial. In this regard, there is no substitute for good judgment, or common sense. These comments apply to meets of every kind, be they high school, NCAA, summer league or the Olympics!*

*Officials must be knowledgeable of the current MCSL rules and their interpretation. That means obtaining a copy and becoming thoroughly familiar with the MCSL Handbook. Officials should study the Handbook extensively, attend certification clinics, consult those with more knowledge and experience and learn the circumstances that prompted any recent changes in the rules. The greater your interest and activity and the greater your exposure to sources of information, the better official you will become. The best way for an official to stay out of trouble is to know the rules and stick to them. Officials who deviate from the rules, no matter how well intentioned the effort, invite protests and challenges to their decisions.*

#### **Warm-up Procedures**

*1. Warm-ups are to be monitored by the Referee and/or by Marshals designated by him or her. The Referee should be sure to discuss warm-up procedures with coaches.*

*2. Headfirst entry into the water is permitted only 1) during an event, 2) during a supervised warm-up or 3) during a supervised practice. In all cases, water depth must be at least 4 feet and all swimmers must exit away from the starting end.*

*3. During general warm-up, swimmers will enter the water feet first and circle swim. No entry from sides of pool, no use of training aids (kickboards, paddles).*

*4. Sprint lanes may be designated by the Referee or Marshals. When using sprint lanes, swimmers will perform a racing start at the deeper end of the pool, swim to the opposite end and exit there. A Marshall, who, for this purpose may be a coach, must monitor each sprint lane along with the rest of their swimmers.*

I have also reviewed the American Red Cross Safety Training For Swim Coaches Supplement and reviewed material on USA Swimming's website (USASwimming.org) and reviewed other MCSL swim teams web sites (including two other Division A teams) and while I find information about the importance of a good night's sleep and a proper diet and fluids, I do not

find accommodations for early warm ups. I think the conditions of the swim league do not warrant a special 6 a.m. warm up for Tilden Woods.

More to the point, the material I read stresses the importance of life guards on deck any time any swimmer, even swim team participants, are in the pool; the course Marshall and swim coaches present when swimmers arrive at a meet; properly executed turns at the wall, and proper stroke form as the elements which prevent injury to swimmers.

Swim Team Weekday Practice: I do not disagree with swim team practice beginning at 8:30 a.m. for the 13 - 18 year old swim team members, (ending at 10:00a.m.) and swim team practice for the 12 and younger can be scheduled from 10:00 a.m. until 11:00 a.m., keeping in mind there is a second swim team practice in the late afternoon, 4 days/wk.. NOTE: The swim team does not have a static or set number of members, but it should be noted for purposes of this forum: this team has had a current membership of over 200 children in the past several years. Residents on Tilden Lane have complained and petitioner recognizes that dropping off or picking up children at the top of the driveway or in a manner which creates traffic and parking difficulties is a relevant issue and more is discussed under the heading Traffic and Parking. Swim team practices and swim meets for a team membership of this size creates significant traffic and vehicular trips to and from the pool.

Divisionals: Montgomery County Swim League ([www.mcsl.org](http://www.mcsl.org) Meet Management Handbook revised 4/10 page 17) describes the Divisionals as "rather long". There are two heats of each individual event and one heat of each relay event for a total of 96 heats (p17 Meet Management Handbook revised 4/10) as compared to a regular "A" swim (dual) meet where there are 50 heats. Even the petitioner relates the adverse effect Divisionals would have on the community: [Tr 4/30/10 page 100 lines 13-21] Petitioner's board president, Ms Ship, explains "We're too small a pool. We know we don't have the parking and the facility to be able to host those meets... because we know that it would have a negative impact on the community."

Recommendation: deny the request to host Divisionals.

Lock-In:

Mohican Swimming Pool Association, 1958: The Board of Appeals prescribed the following condition which it deemed necessary to safeguard the general community interest and welfare, "The property shall not be used between 10 p.m. and 9 a.m. except that on not more than 6 nights it may be used until 11 p.m."

The BOA has never approved overnight camping at a community pool. Sleep-overs are not an inherent use of a community pool. Many swim teams (including the Tilden Woods swim team) go off site as a group for activities. Some go for annual trips to the beach (Little Falls); MCSL sponsors an annual trip to an amusement park; teams go to movies or to team mates and coaches homes for activities. We have camp grounds in Montgomery County which could easily serve the swim team's desire for an overnight experience. The county operates many indoor recreation centers where amplified noise is permissible, including a rec. center in Tilden Woods park which could serve as a Talent Show venue. The talent show could also be a part of the year end banquet. The yearend banquet has already moved off of the pool site and into a local public school. This activity is not an inherent characteristic or property of a community pool.

Recommendation: I request the Board of Appeals maintain its position and deny the petitioner this request.

Other Requests for Swim Team Related Expanded Hours:

Wednesday evening swim meet: I do not agree with extending a Wednesday evening B meet (or Mini Meet) past 9 p.m. if it requires noise amplification. I do not agree with petitioner's Statement of Operations, "III.B(1)". Amplified noise should not extend beyond 9 p.m. Additionally, sound does not cooperatively travel in a straight line. Facing speakers toward the park does not guarantee the neighbors will not be disturbed by the noise. Landscape screening does not create a sound barrier for amplified noise.

General Warm Up Warm ups should begin at 8 a.m., allowing the standard MCSL ½ hour warm up to each team.

Time Trials As per other swim meets, Time trials warm up could start at 8a.m. If amplification (starter or P.A. system) is used at this meet, the meet should not start before 9 a.m.

Requests for Expanded Hours for Membership:

Sundays: See [Tr 4/30/10 page 100 lines 22-25 and page 101 lines 1-6.]. If the pool isn't going to open until 10:30am even if the request to expand the Sunday hours to 9am is granted, and "very few people wander in at 10:30. Most of the activity at the pool is in the afternoon." why aggravate the neighbor's concern regarding additional traffic and noise by needlessly expanding the Sunday hours? If the pool isn't open until later, it will disallow noise from pool operations and/or maintenance from being emitted from the property on Sunday mornings, before 9am. Trying to keep the same hours of operation for Saturday and Sunday [Tr 4/30/10 page 101 lines 9-11] is disparate if the pool isn't open for general membership swimming until approximately noon on Saturdays when there is a home swim meet and 10:30 a.m. when the swim meet is "away". Recommendation: open the pool at 10:30 a.m. on Sunday.

Early Morning Lap Swim: My personal experience with this concept was met with an explanation by pool representatives that they couldn't afford to staff the pool with lifeguards during these extra hours. I would request that the petitioner provide documentation of financial and general membership support (not swim team support) of this expansion. (If you open for early lap swimming from 6:30 a.m. - 7:30 a.m. but do not open for swim team practice until 8:30a.m., you have an hour where you are either asking all patrons and employees to leave the facility or you are paying your staff to operate an empty pool for one hour 5 days/week.)

I would request, if the extended hours are granted, pool and/or landscape maintenance not begin work prior to 7 a.m. on weekdays. (It may be difficult to limit parking to the east side if landscape company or other maintenance or vending machine vehicles or garbage collection vehicles gain admittance to the property during these hours (dumpsters are on the west side). The hearing examiner did query Ms Ship about restricting the hours when the petitioner

may allow access to maintenance providers at the pool. Ms Ship was in agreement [Tr 4/30/10 page 106 lines 4 -16].

It also may be unmanageable to "limit the swimmers to 25". While I would remain hopefully optimistic that people participating in early morning lap swimming would walk or ride their bike to the pool, in all likelihood these swimmers would be on their way to work and this would create 25 additional vehicular trips to the pool and 25 vehicular trips away from the pool in addition to staff trips to the pool. The current condition of the parking lot is unstriped and therefore the exact number of parking spaces on the east side is unknown.

Early lap swim may not be feasible for the membership at this time, but if allowed, these expanded hours allow maintenance or garbage collection onto the site; therefore early lap swimming should not start prior to 7:00 a.m. to promote noise control on the pool property prior to 7:00 a.m. on weekdays. If maintenance or garbage collection services have their own key to access the facility, they should not do so prior to 7 a.m. during the week or 9 a.m. on weekends or holidays.

Recommended Hours During Pool Season when Montgomery County Schools are closed:

Weekends:

10:30a.m. - 9p.m. Saturday and Sunday

except for

three or four (1 rain date) Saturday mornings in June and July open no earlier than 7:45 a.m. for home "A" Meets (no amplified noise prior to 9am) and

one 8 a.m. for Time Trial (no amplified noise prior to 9am)

Maintenance hours should begin no earlier than 9 a.m. and end prior to 9 p.m.

Weekdays:

7 - 8am adult (18 and over) membership early lap swim (no swim team; no lessons) M - F (if feasible see previous notes regarding Early Morning Lap Swim )

8:30 - 11am swim team practice M - F

11am - 9pm all membership pool hours (with afternoon swim team practice) M - F

with

no more than eight - ten late nights total as described below:

three or four Friday nights to prepare prior to home meets

from three to five Wednesday evenings for B Meets (1 rain date)/ 1 "Mini Meet" ("Mini Meet" was not requested in Petitioner's filing)

one adult evening (members and no more than 1:1 ratio of members to guests and no events/parties open to the public)

one youth evening (members only; no guests and not just for swim team)

Maintenance hours should begin no earlier than 7a.m. and end prior to 9 p.m.

Facility may not open earlier than 7am and must close no later than 11 p.m.; clean up must be factored into hours beyond 9pm so that no one is remaining at the facility beyond 11p.m. ALL lights must be off, including vehicle headlights.

Recommended Hours for Maintenance/ Repair/Construction (closed season):

Facility may not open before 7 a.m. M – F and 9 a.m. weekends and holidays and must close, with no one remaining at or returning to the facility, by dusk. Except for interior lights during the time of maintenance, repair, or construction, ALL lights must be kept off.

**I urge the Board of Appeals to add a Season of Operation, Memorial Day weekend to Labor Day weekend, to petitioner’s Statement of Operations.** Many pool members refer to this season of operation already. I think they assume it is a natural condition of an outdoor community pool in this region of the country. **I urge the board to emphasize that the pool is required to provide year round maintenance but not access to the pool for its stated principle use as a community pool, at any time other than the season of operation.**

Amplified Noise: After reading several hundred opinions on over 50 special exception pools ( a few which currently operate as private or social clubs and not only as community pools) in Montgomery County I can say with some certainty that the Board of Appeals generally does not endorse amplified noise as an inherent condition, recommend amplified music, and rarely grants approval of amplified music of any type, or use of a public address system for anything other than emergencies or use by staff. Particularly in cases where there have been noise complaints issued by neighbors, there is reluctance to disturb the neighbors. I am asking for similar conditions and courtesy be afforded to me.

Where amplification systems, such as public address systems and starters, for use at swim meets are granted, you will find conditions of use. In granting a modification request of a Special Exception, neighbors concerns and the non-inherent adverse effects of the use **on nearby properties** must be scrutinized. The use must also be found to be consistent with the applicable master plan and compatible with the existing neighborhood. Prior and current submissions by Mr. Sadoff review the amplified noise policy for many Special Exception regulated community pools: no amplified music; P.A. speakers for emergency and staff only.

In the petition of West Hillandale in 1984, the technical staff report revealed screening would not appreciably reduce noise factors. While a 2004 Administrative Modification was approved to permit physical items which did not increase the intensity of use at the pool, the speakers, which were approved, were limited to purposes of safety and security. Amplified music was denied. Generous landscape and berms buffer the neighbors from inherent adverse physical and operational characteristics. You do not find acoustical walls around community pools because amplified music is non-inherent and adverse. It is inappropriate on this small site, less than 2 acres, which shares property lines with residential property on two sides.

Special Exceptions **require a request for permission and a grant of approval by the Montgomery County Board of Appeals.** Regarding a Saturday evening adult party and fund raising event, Ms Ship states in her June 24, 2010 letter [Exhibit 78] “Although we had amplified sound, it was well within acceptable noise levels and primarily directed away from neighbors. Again, this is a permissible activity and we were compliant with our special exception and with county regulations.” I do not agree with Ms Ship’s summation. Petitioner’s case file does not

include a request for use or granting of amplification at this Saturday evening June 19, 2010 adult party or at any other time. The party was a fund raiser, open to anyone who bought a ticket. The evening agenda included use of a P.A. system (starting at 5:30pm) for auctioneering purposes. The live auction started at 9:00 p.m. and "Music and Merriment" started at 9:30 p.m. and was planned to continue until 10:30 p.m. during DEP "quiet hours". Alcohol was served. As was noted in the Regency Estates Swim Club Hearing held June 23, 1966, the Opinion of the Board of Appeals for Montgomery County stated, "**since no request was made** [to permit the sale of soft drinks and other refreshments] **no such authority was granted.**" (Emphasis added.) The Board of Appeals can set conditions which are more restrictive than county or state regulations. For example, the Board of Appeals can deny requests for amplified noise, deny requests to serve alcohol or food; they can limit on street parking.

I was grateful that Mr. Todd Keller tested his noise meter against the equipment used by Mr. McCann during the Department of Environmental Protection (DEP) test on July 4, 2009. The starting gun and public address system used during swim meets should not amplify beyond the dB limits of the Noise Control Ordinance nor be used in a way that causes a noise disturbance. It is important that pool personnel understand and monitor this during all swim meets. The test performed by Mr. McCann was technically inconclusive since the facility was aware that Mr. McCann was there. The most frustrating dilemma, for neighbors disturbed by noise, is the lack of enforcement at the time the noise is problematic. Montgomery County police officers do not enforce compliance with the Noise Control Ordinance. My history, documented in the case file, with asking "the pool" to turn down the music speaks for itself and when the pool doesn't own the equipment it uses, it does not control its usage. The pool board should purchase any equipment it needs to run swim meets (starter and public address system), take direct responsibility for its proper use, and not allow any amplified equipment/devices to be brought onto pool property other than small personal systems used with head phones and which are not intended or used for broadcast outdoors.

The actual loudness of a sound is only one component of the effect it has on human beings. Other factors to consider are the time and place, the duration, the source of the sound and whether the listener has any control over it.

While I do not object to a starter and P.A. system used during a swim meet, *in conformity with the entirety of the DEP Noise Ordinance*, I do want to voice concern over the use of portable speakers. Title 10 Department of Health and Mental Hygiene Subtitle 17 Sanitation Chapter 01 Public Swimming Pools and Spas states in 10.17.01.22 A(1)(b) states: An owner shall ensure that a deck at a recreational or semipublic pool is continuous with a minimum unobstructed width of 4 feet and an average width of 6 feet. Section 10.17.01.22 C states Except as provided in subsection B (2), An owner may have ladders, handrails, lifeguard stands, structures for use by disabled individuals, and other pool equipment on the deck, an owner may not have light poles, structural supports, decorative fountains, waterfalls, and other obstacles or obstructions within 4 feet of a pool or within the required deck area of a spa.

#### Membership:

It is my understanding, zoning code defines 1.33 persons per family. The mathematical formula applied to the area of petitioner's pool defines user load or bathers as being 428. User load



divided by 1.33 defines membership. There is no rationale for changing or manipulating this formula. There is however, a great need to ensure governing documents of TWRA are consistent. This corporation was established only with the purpose of operating a community pool. The By-Laws, documents which were used to approve the original Special Exception [CBA-1383 Exhibit 9], are currently inconsistent with or in disagreement with the proposed Statement of Operations (By Laws can be found on TWRA website). Once the Statement of Operations has been granted, the membership is encouraged to vote to amend the By-Laws so there is no confusion as to which document takes precedence. All categories of membership whatever the category or price break, bonded or not, apply to the total membership. If your membership, free or paid, bonded or not, or your annual permit gets you onto the pool deck as a bather, it needs to be counted as a family membership.

Memorandum March 4, 2011:

Petitioner's memorandum dated March 4, 2011 states: "No further changes to the physical improvements on site have occurred since the 1968 alterations." While I cannot comment on this statement prior to 1999, my 1999 welcome letter and additional annual correspondence from the pool's board/president reported:

**In 1991-1992** they completely renovated main pool, pool deck, baby pool and shower house.

**December 2003:** construction started on bathhouse renovation (DPS records include a Building Permit #322071 dated October 21, 2003).

**January 2004:** Renovation of pool house lobby and changing rooms almost complete.

**January 2005:** Deck has been expanded and the pool heaters are in (east of pump house).

**November 2009:** The building that houses our pump is in a state of disrepair, to the point it poses a significant safety issue. The pump is the mechanism that allows proper filtration of the pool and is vital to its overall operation. Our short term solution has been to brace the structure internally under the guidance from a structural engineer, but this is not a long term solution. Of all the challenges we face, this is by far the most immediate and critical. While not dire, this situation requires the entire community's focused attention, particularly as it pertains to the financing of the repair effort.

**Summer of 2010:** Bracing of the shade structures.

Inquiries have been made to DPS regarding petitioner's application for permits. Since the 2009 description of the pump house has been reported to be serious, it would seem that a permit would have been required to brace this building.

In testimony before the Hearing Examiner, Ms Scala-Demby describes the swim team as an accessory use (tr 4/30/10 page 66 lines 5 - 19) and in a letter dated March 1, 2011, Ms Scala-Demby, Zoning Manager DPS, describes swim teams and their activities as part of the principle community swimming pool special exception use. While a Division A swim team may be prominently featured at Tilden Woods Pool, I question whether all swim teams (or even Tilden

Woods Swim Team) are a dominant or main activity (principle use) at all special exception pools in Montgomery County and further that swim team or swim team activities do not necessitate additional approvals from the Board of Appeals.

In 1978, East Gate Recreation Association (S- 596) filed a petition for a Special Exception with the Board of Appeals to permit the construction and use of a community swimming pool. In the Opinion of the Board, petitioner proposed that the swimming pool be open from approximately Memorial Day to Labor Day, open 9 a.m. to 9 p.m. with supervised lessons or swim team practice starting at 8 a.m. Petitioner further requested, "**If** (emphasis added) club members decide to establish a swimming team, the Association proposes that not more than seven competitive meets per year be conducted at the subject site with meets starting not earlier than 9 a.m. Any public address system would be limited to necessary announcements during swim meets or in emergencies; no music or other non-essential broadcasts would be permitted." The petition was granted with additional prohibitions on amplified music (the P.A. system may not be used at any time to broadcast music out of doors and performance of live music out of doors shall not be permitted).

Specific reference to swim teams can be found in original petitions of Eldwick (1975), Stonegate (1977) and Quince Orchard (1976) and in modifications of Inverness - a private club (1976), Damascus (1977), Little Falls (1977) and others. Little Falls actually added their swim and dive team and made several trips back to the Board for operational issues. It is also interesting to note Olney Mills (CBA-2781) was originally granted a Special Exception to permit the construction and operation of a community swimming pool in 1970 with petitioner "anticipates that there would be competition meets with the league in the county, and that the number of meets would be limited." The request was granted with conditions. Condition number five stated, "There shall be no starting guns used at any time." In 1974 Olney Mills returned to the Board of Appeals requesting condition number five be deleted. The Board agreed and the new condition stated Petitioner may use starting guns in connection with the swim meets only on three dates per season. Many of the Special Exception conditions, drafted in the 1960's, are directed by the Board of Appeals in the use of starting guns for swim meets: Cedarbrook (1964) Palisades (1968) Regency Estates (1965) and others.

In 2006 The Board of Appeals granted Case No. S-2644 to Greencastle Lakes Community Association to permit a community swimming pool (conversion from a HOA pool) but in 2007 the Board informed Greencastle Lakes that Maryland Suburban Swim Club was not permitted to use the pool. The swim club moved to Fairland Aquatics Center in Laurel. It is my understanding that, to date, Greencastle Lakes does not have a swim team.

Petitioner has already admitted (Tr 4/30/11 page 10 lines 3 - 25) it is the Board of Appeals who has the authority and responsibility to review and approve the operational activities of a special exception pool and as previously reviewed, it is the inherent and non-inherent; adverse and not adverse conditions which one should scrutinize.

Similarly petitioner has argued that DPS was filling the shoes of the Board of Appeals, if you will, claiming that in the 60's and 70's if an improvement were to be constructed and it did not, in the eyes of DPS, substantially change the nature or character, then DPS approved

modifications without Board knowledge or Board approval. A review of Special Exceptions records show the following pools coming before the Board of Appeals between 1966 - 1969: 1968, Potomac added tennis courts; 1969 Merrimack expanded their deck and added fencing; 1966 Old Georgetown added tennis courts, 1966 Kensington Heights added a second pool; 1967 Parkland added lights, and 1969 North Chevy Chase enlarged the pool for diving and added tennis courts. The Hearing Examiner has already commented on the petitioner's argument.

In Conclusion:

I ask you to protect the integrity of my residential neighborhood afforded to me by the conditions of state and county laws/ordinances, the Master Plan and Zoning regulations.

This review should not be limited to the petitioner's filing but should also review violations noted by DPS which remain unaddressed by petitioner. In addition to amplified noise abatement and a clear and concise Statement of Operations, screening and fencing requirements must be scrutinized with respect to the Zoning Ordinances and COMAR.

*Zoning Ordinance 59-G-2.56*

*(c) When the lot on which any such pool is located abuts the rear or side lot line of, or is across the street from, any land in a residential zone, other than publicly owned land, a wall, fence or shrubbery must be erected or planted so as to substantially screen such pool from view from the nearest property of such land in a residential zone. (d) The following additional requirements must also be met: Special conditions deemed necessary to safeguard the general community interest and welfare, such as provisions for off-street parking, additional fencing or planting or other landscaping, additional setback from property lines, location and arrangement of lighting, compliance with County noise standards and other reasonable requirements, including a showing of financial responsibility by the applicant, may be required by the Board as requisite to the grant of a special exception. Financial responsibility must not be construed to mean a showing of a 100 percent cash position at the time of application but is construed to mean at least 60 percent.*

The Special Exception Inspection Report was not merely a request to update the site plan. The Notice was issued to address real problems; real violations which continue to affect neighbors, grownups and children. Fences around pool facilities do not just serve as demarcations. [CBA-1383-A Exhibit \_\_Memorandum page 3, 5a ] Fences save lives; they discourage trespass. They are not just boundaries, they are barriers. The requirement for proper fencing should be taken seriously. Enforce the requirement for appropriate fencing deemed necessary to safeguard the general community interest and welfare.

Enhance and maintain fencing and landscape screening, by either enforcing the current fencing and landscape conditions placed on the special exception (which should, at a minimum, require replacing the fence and replacing the white pines on the north and west perimeters with hemlock and establishing an evergreen landscape on the entire south and the SW corner), or, with regard to landscaping, protect established & mature foliage while adding additional landscape screening inside the fence where it can be maintained. Add to the petitioner's Landscape Plan: replacing the white pines and replanting with a tight evergreen tree/shrub hedge inside the fence on the

north and west sides and planting an evergreen tree hedge inside the fence between the SW corner of the sand volleyball court and the wading pool.

Landscape debris should be removed from the approx 60 ft by 8 ft space by the southern fence. SW corner. DPS Guide to Code Enforcement suggests one of the Department of Housing and Community Affairs responsibilities is preservation of property standards. Chapter 48 Solid Waste prohibits the accumulation of solid waste which includes dead or felled trees, uprooted tree stumps, tree limbs, bushes, plants, leaves, grass, and garden trim. Do I need to call DPS and request the approximately 60 ft x 8 ft collection of yard waste be removed from the SW area (inside the chain link fence)?

Year round landscape maintenance should be required, including clearing snow/ice from the petitioner's sidewalk.

Limit the amount of noise - by denying all amplified music and any other amplified noise which is not directly related to the starting system or public address system which should only be used to organize and run the following "home" swim meets: an "A" or "B" (dual) swim meet or Mini Meet (not requested in filing) or Time Trial during the specified hours between 9 a.m. and 9 p.m. but not for more than 3 hours per day and which shall not exceed DEP dB limits or other conditions of the Noise Control Ordinance. Fun does not have to be amplified. A paradigm shift does not have to start with, "the neighbor won't let us have amplified music." As a community and neighborhood, we can raise awareness about noise pollution and respect that one person's music can be another person's misery. We can turn off our car lock horn honking devices and employ landscape companies, who practice "Quiet Lawns" and respect "Quiet Hours". We can actively engage in practicing the Good Neighbor policies suggested by MCSL.

Limit the lighting by promoting the immediate implementation of a shielded lighting plan. Specify the closing hour of the entire facility for all activities and/or maintenance to be not later than 11:00 p.m. during the open season of operation. Additionally, contractual agreements with pool management, and any construction or maintenance persons must be made to assure neighboring residents that work will be done between the hours of 7 a.m. and dusk M - F and 9 a.m. - dusk on Saturday or Sunday.

Limit the amount of traffic by denying, in part, the request for expanded hours. (In 1981, Connecticut Belair Pool, when reducing its membership from 1,500 to 700, was not allowed to expand morning hours from 9 a.m. to 8 a.m.) Require a pool season of Memorial Day weekend to Labor Day weekend in the Statement of Operations. Additionally limit the traffic (and on street parking) by prohibiting events, open to the general public. There should not be a ratio greater than 1:3 of pool members to guests at pool wide events or private daytime parties (i.e. children's birthday parties). The pool and/or pool property should not be rented or loaned out to non members.

Limit the overflow parking - by endorsing MCSL on street parking suggestions and enforcing parking regulations and/or parking plans as a condition to the granting of a continued Special Exception.

Reduce the impact of the deteriorating physical plant on the environment particularly as it relates to the integrity and safety of the existing pools and pump house, plumbing and electrical systems, chemical storage, storm drain system, and proposed railing plan and entrance changes. Encourage petitioner to submit plans for pump house, pool, and bath house replacement to avoid the petitioner from having to come back for emergency administrative modification to replace failing infrastructure or appurtenances.

Provide a transparent and open relationship between the pool and the neighbors by endorsing the following: post the approved Statement of Operations and any conditions established by the BOA on the pool's website and provide a paper copy to any neighbor who requests one. Post the Statement of Operations and any conditions established by the BOA at the pool in a place visible to all patrons, guests, staff, contractors, etc. Prior to or on the day of filing, with any governmental agency, provide members of the Neighborhood Liaison Committee with a copy of any future modification requests filed with the Board of Appeals. Provide members of the Neighborhood Liaison Committee with notification of filings for DPS permits, food licensing, HHS permits, etc. Submit minutes of meetings of the NLC to the BOA or their delegate. Provide access to and membership in the Neighborhood Liaison Committee to any interested neighbor (not just the 4 adjacent neighbors as suggested in petitioner's filing) and provide NLC members with a TWRA board member contact email address and phone number. Hold meetings at the pool.

If there were already a NLC forum, I would request the pool's board address the following:

There were repeated reports in 2009 that the pump house was in a state of disrepair to the point where it poses significant safety issues, yet the pump house is not mentioned in the Major Modification. What has happened in the past two plus years and when do you plan to replace the pump house?

Additionally, it has been noted the pool is old and, having been replaced in 2008 (the process revealed deteriorating subsurface concrete), the current white coat will only last a few more years. The major modification does not mention replacement of the pool. Is there a time line for that?

What are the necessary permits (and do you apply for them) to serve/sell food and alcohol at the pool? Since neither of these items are part of the current Statement of Operations, will you no longer be serving/selling alcohol either during the day or during an evening adult party? Have you planned to stop serving/selling food concessions and merchandise?

I applaud the swim team for moving their "Saturday morning Away A meet caravan" off of Tilden Lane. Ms Ship mentioned it was moved into Tilden Woods Park. As the park is open at that hour and used by tennis players and dog walkers, and the driveway and parking spaces are limited (approx 26 spaces), couldn't you move your caravan to the Middle School parking lot on Tilden Lane where there is ample space?

How can we make sure the sidewalks are cleared of snow in a timely manner?

Would you stop dumping yard trim debris in the SW area of the property and remove the pile that is there? Could you remind your landscape company not to dump yard trim over the fence (onto park property) or collect it at the facility?

You repaired the stockade fence at the top of the driveway, but there are loose and broken boards elsewhere along the stockade fence. Who can we call to have those areas repaired?

How can we make sure the mowers and leaf blowers don't start before 9 a.m. on Saturdays or that the pool maintenance doesn't continue past dark? Who can we call?

I don't know where I'm going, but I know where I've been. I hope you will not require me to spend another Memorial Day weekend listening to petitioner's 4 hour long playlist, overriding my personal choice, in my own home, for a quieter, somber tribute. I'd like to think my efforts afford me at least that much. I appreciate your consideration.

Encl: DHCA/DPS "A Guide to Code Enforcement" from DPS website

CC: Mr. Martin Grossman, OZAH  
Ms Soo Lee-Cho, Esq.  
Technical Staff M-NCPPC  
Mr. Ed Axler  
Mr. Shahriar Etemandi  
Mr. Steve Findley  
Mr. Nkosi Yearwood



DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS (DHCA)  
AND THE  
DEPARTMENT OF PERMITTING SERVICES (DPS)  
PRESENT

# A Guide to CODE ENFORCEMENT

Code enforcement in DHCA and DPS is generally initiated through complaints. This means that both agencies rely on citizens to identify and report possible code violations.

This guide explains how to file a complaint. The guide covers the following:

- ❖ Accessory Apartments
- ❖ Accumulations of Solid Waste
- ❖ Building/Electrical Work Without A Permit
- ❖ Grass and Weeds in Excess of 12"
- ❖ Deteriorated Structures
- ❖ Public Nuisance
- ❖ Signs
- ❖ Storing of Inoperable and Unlicensed Vehicles on Residential Property
- ❖ Sediment Control Violations
- ❖ Zoning Violations:
  - . Illegal Uses/Activities
  - . Right of Way
  - . Occupancy Limits

## The Department of Housing & Community Affairs

One of the Department of Housing and Community Affairs' most important responsibilities is the preservation and improvement of housing and property standards through the enforcement of the Montgomery County Code. Chapter 26, Housing and Building Maintenance Standards, Chapter 48, Solid Waste and Chapter 58, Weeds. To report any of the following conditions, call (240) 777-3785.

**ACCESSORY APARTMENTS** - An accessory apartment is a private self-contained living area within an existing dwelling or within a subordinate building on the property. A Special Exception from the Montgomery County Board of Appeals is required before an accessory apartment can be constructed in a residential area. Accessory apartments are inspected annually for continued compliance with the requirements for the Special Exception and for life safety and health issues.

**ACCUMULATIONS OF SOLID WASTE** - Examples of solid waste are: garbage, medical waste, debris from building construction, ashes, junk, dead animals, dead or felled trees, uprooted tree stumps, tree limbs, bushes, plants, leaves, grass, garden trimmings, abandoned vehicles, machinery, bottles, cans, waste paper, cardboard, boxes, containers, tires, appliances, furniture, automobiles, trucks and recreational equipment, any or all of which is in a state of disrepair or are not operational.

**GRASS AND WEEDS IN EXCESS OF 12"** - Generalized growth of any weed or any generalized plant growth more than 12" high within 15' of any property boundary is not permitted. Generalized plant growth does not include trees, ornamental shrubs, flowers or garden vegetables.

DETERIORATED STRUCTURES - Examples of deterioration are; gutters and downspouts that are loose or leaking; flaking and/or peeling paint on exterior wood trim; missing or dilapidated roof shingles, missing or damaged siding, cracked and chipped concrete walkways or steps.

PUBLIC NUISANCE - Examples of public nuisances are:

- ❖ Vacant and unsecured buildings, unprotected or abandoned wells, open shafts, open basements, excavations, unsafe fences, unsafe stairways and unsafe steps;
- ❖ Structures which are unsanitary, littered with rubbish or garbage, used for outdoor storage or abandonment of appliances [for more than two (2) days], or equipment, which poses a threat of injury or danger to life;
- ❖ Severely deteriorated, dilapidated, structurally unsafe or fire-damaged buildings or dwellings;
- ❖ Sanitary sewage and plumbing facilities that are not functioning properly;
- ❖ Any condition that results in substantial damage to another property;
- ❖ Any condition that is unsafe, dangerous or unhealthful to occupants, neighbors, employees, or visitors, guests and tradesmen.

STORING OF INOPERABLE AND UNLICENSED VEHICLES ON RESIDENTIAL PROPERTY - It is unlawful to store dysfunctional motor vehicles for more than 30 days or unregistered vehicles for more than 90 days on private property. Nonfunctional motor vehicles are considered solid waste and must be removed or repaired within 30 days. Unregistered vehicles are functional vehicles that are not registered in any state or jurisdiction. Vehicle owners have 90 days to register or remove the vehicle. To report a non-functional, abandoned vehicle or unregistered vehicle on **private property** contact DHCA at (240) 777-3785. To report a non-functional, abandoned vehicle on a **public road or right-of-way**, contact the Police Department's Abandoned Auto Unit at 301-840-2454.

## The Department of Permitting Services

The Department of Permitting Services is responsible for providing the highest quality of public service in the area of licenses and permits while ensuring compliance with Montgomery County's development and construction standards, as required by the Montgomery County Code, Chapter 8, Building Codes, Chapter 17, Electrical Code and Chapter 59, Zoning.

BUILDING/ELECTRICAL WORK WITHOUT PERMIT - Building permits are required for all new construction and additions to existing structures. Other projects requiring a permit include: bay windows, garages, sun rooms, decks and dormers; alterations, such as kitchen or bathroom remodeling, finishing an attic or basement, or reconfiguring a floor plan; minor structural repairs or replacement; and fence, retaining wall, shed and pool construction.

An **Electrical Permit** is required for work that involves installing, repairing, or maintaining any electrical wiring or device designed for conducting, consuming or converting electric al current.

A **Historic Area Work Permit** is required for any work that changes the exterior features of any historic site or any historic building located within any Historic District, or designated in the Historic Atlas as an historic site.



If you suspect that work is being performed without a building, electrical or historic area work permit, contact DPS at (240) 777-6259.

**RIGHT OF WAY** - Right of way violations typically involve non-standard driveway aprons, illegal curb cuts, and construction debris and utility company construction in the right of way. To report suspected right of way violations, contact DPS at (240) 777-6259.

**SIGNS** - There are three types of signs permitted in Montgomery County: permanent, limited duration and temporary. All signs are regulated by their type, the general zoning classification where they are located and their size and placement on the property.

A sign permit is required for any permanent sign posted on private property for more than 30 days and any limited duration sign posted on private property or in the public right-of-way. Temporary signs are permitted only on private property and must not be displayed for more than 30 days.

Certain signs are prohibited. Examples include: roof signs, obstructive signs, unsafe signs, signs that move (banners, pennants, streamers, balloons, etc.), signs attached to traffic devices or utility poles, and signs placed unlawfully in the public right-of-way.

To report any suspected illegal signs, contact DPS at (240) 777-6259.

**SEDIMENT CONTROL VIOLATIONS** - Sediment control complaints typically involve construction and earth moving activities. Normally, these complaints involve concerns of grading without proper permits or sediment run-off onto private property, streams, public roads and right-of-ways. Telephone Number: (240) 777-6259.

**ZONING VIOLATIONS (Illegal Uses/Activities & Occupancy Limits)** - Zoning complaints typically involve allegations of improper uses/activities in residential, business, and other zones and violations of building restrictions such as setbacks, lot coverage, and height limits. In addition, the Zoning Ordinance restricts the number of unrelated persons who may reside in a residential dwelling. To report suspected zoning violations, contact DPS at (240) 777-6259.

# HOW TO REPORT A COMPLAINT

## The Department of Housing & Community Affairs

When you contact DHCA, and are connected to the Housing Code Office (240) 777-3785, please provide the following information:

- Your name, address and phone number (not required; anonymous complaints are accepted),
- The address and/or location of the property where you have observed a possible code violation,
- The property owners' or occupants' names, if known.

You may also submit this information in writing.

IF YOU WISH TO HAVE YOUR NAME AND PERSONAL INFORMATION REMAIN CONFIDENTIAL. PLEASE CLEARLY STATE THIS REQUEST DURING YOUR TELEPHONE CALL TO DHCA OR IN YOUR WRITTEN COMPLAINT.

**What Happens Next?** You will receive notification identifying the Inspector assigned to investigate your complaint. This will allow you to follow the progress of the investigation.

If violations are found, a Notice of Violation will be mailed to the property owner requiring compliance by a certain date. A Notice may also be posted on the site. The amount of time allowed for code compliance varies based upon the type of violation and the time necessary for making repairs or corrections. Generally, 30 days are allowed for the correction of non-emergency violations. Emergency violations must be corrected within 24 hours.

The property will be re-inspected to determine whether violations have been corrected.

**If Violations Remain Uncorrected** If violations are not corrected, various civil and criminal penalties, including substantial fines, can be imposed. The County also has the right to clean up a property and charge the property owner for costs incurred. For additional information, visit the DHCA website at:

<http://www.montgomerycountymd.gov/dhca/>

# The Department of Permitting Services

DPS maintains a phone line for citizens to request investigations of suspected zoning violations and illegal construction activities (building without permits). The phone number is (240) 777-6259.

When you contact DPS, please provide the following information:

- Your name, address and phone number (not required; anonymous complaints are accepted).
- The exact address and/or location of the property where you have observed a possible code violation.

You may also submit this information in writing.

IF YOU WISH TO ENSURE YOUR NAME AND PERSONAL INFORMATION ARE KEPT CONFIDENTIAL. PLEASE CLEARLY STATE THIS REQUEST DURING YOUR TELEPHONE CALL TO DPS, OR IN YOUR WRITTEN COMPLAINT.

**What Occurs After Filing A Complaint?** Complaints are assigned to Zoning/Building Investigators/Inspectors who, if they find violations, instruct the violators to take corrective action. If a violation is not corrected within a reasonable time, various civil and criminal penalties, including substantial fines, can be imposed. The department keeps complainants' names confidential.

**Will The Results Of An Investigation Be Available?** The Investigator will inform you of important developments in the case and its final outcome.

**How Long Will the Investigation Take?** Normally, an investigation begins within one to three days from receipt of the complaint. Investigation time varies according to workload and/or complexity of the complaint.

For additional information, visit the DPS website at <http://permittingservices.montgomerycountymd.gov/>

Copy Carlton Gilbert

March 17, 2011

Martin L. Grossman, Esq.  
Director  
Office of Zoning and Administrative Hearings  
Montgomery County Board of Appeals  
Office of Zoning and Administrative Hearings  
100 Maryland Avenue  
Suite 200  
Rockville, MD 20850

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Mr. Grossman,

I have requested the petitioner not open the Tilden Woods Recreation Association (CBA 1383-A) pool facility to outside events for non-members. Since that is my position, I cannot be reticent to the recent notice posted to the Tilden Woods Pool website. I applaud the women's philanthropic mission of raising money for the Celine Silver Scholarship and respect their dedication to the memory of their friends. However, I am concerned about holding a 5k race at the pool facility.

I have previously highlighted the issue of an unsafe entryway, which currently serves vehicular and foot traffic simultaneously; the pool would be open at the time the event is slated. Additionally, I have offered my objections to increasing traffic, parking and noise. I was at OZAH on March 11, 2011 and reviewed the contents of the file. There was not a request in the file to hold this event at the pool. It remains my position that a request should be made to the Board of Appeals prior to being granted permission to sponsor an event such as this one.

It is my understanding that the special event approval process for a race through the neighborhood must begin with application to Montgomery County Department of Transportation Division of Traffic Engineering and Operations (TEOS) two months prior to the date of the event, therefore I think it is important to bring this issue to the attention of the petitioner and the Hearing Examiner (and, because of where we are in the filing process, to M-NCPPC Technical Staff contact, Carlton Gilbert) sooner than later. While I risk being labeled a misanthropic curmudgeon, it is a risk I am willing to take. I would hate to have the efforts of Ms Diamond and Ms Carlin be entangled by petitioner's Major Modification process currently underway.

I can suggest that the event could be moved to the middle school (holding school) property on Tilden Lane and hope that the petitioner will reconsider their position of holding this event at the pool.

Respectfully,



Suzanne Keller

Encl: 11 pages

CC:

Soo Lee-Cho, Esq.  
Miller, Miller & Canby  
200-B Monroe Street  
Rockville, MD 20850

Mr. Carlton Gilbert ✓  
Technical Staff - Development Review Division  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Shahriar Etemadi  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

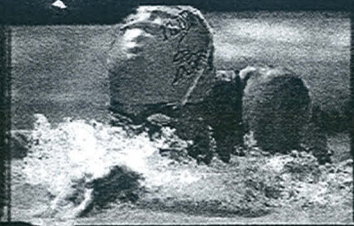
Nkosi Yearwood  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Ed Axler  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Steve Findley  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

MCSL Division A

# TW DOLPHINS

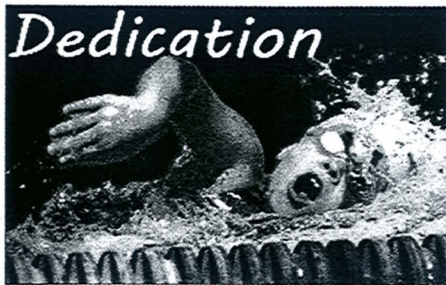


The Tilden Woods Dolphins Swim Team

Home Sat Meets Wed Meets Mini Meet Calendar General  
SOW Forms Records Contacts Archives Photos

Search TWST  
powered by FreeFind

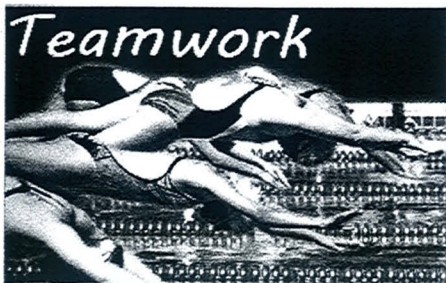
## This Week at TW



### 1st Annual Paul and Celine Silver Memorial 5K

Saturday, June 4, 2011 at Tilden Woods Pool. Check-in and packet pick-up begins at 9 AM | Race Starts 10 am

[Print the registration form](#)



The countdown is on!



### 2011 TW Tentative Meet Schedule

- June 18 - TW at Upper County
- June 25 - TW at Stonegate
- July 2 - Bethesda at TW
- July 9 - MCT at TW
- July 16 - TW at Rockville
- July 23 - Divisional Championship
- July 30/31 - All Stars



TW at Metros!



Join coach Nick and here all about Tilden Woods swimmers at the Metro Championships.

[MORE](#)

**Look Back at the 2010 Swim Season!**

[See the underwater video](#)




**Calendar**
Pool events in green  Tilden Woods Pool
Team events in blue  TWST
Click box at right to deselect 

Click here for MS Word or PDF versions Tuesdays and Thursdays are neighborhood exchange days with Old Farm Pool

**Tilden Woods Pool**

Today June 2011 Print Week Month Agenda

Sun	Mon	Tue	Wed	Thu	Fri	Sat
29 John F. Kennedy's Bir	30 Memorial Day	31	Jun 1	2	3	4 9am Paul and Celine Si
5	6	7	8	<b>Paul and Celine Silver Memorial 5K</b> <b>When</b> Sat, June 4, 9am – 12pm <b>Where</b> Tilden Woods Pool (map) <span style="float: right;">TW Time Trials</span> <b>Description</b> 1st Annual Paul and Celine Silver Memorial 5K Saturday, June 4, 2011- Tilden Woods Pool Check-in and Packet pick-up begins at 9 am Race Starts 10 am REGISTRATION FORM- DUE MAY 15, 2011 www.tildenwoodspool.org		11
12	13 Flag Day	14	15	16 1pm McCo School's Ou <a href="#">more details»</a> <a href="#">copy to my calendar»</a>	17	18 TW at UC
19 Father's Day	20	21	22	23	24	25 TW at Stonegate
26	27	28	29	30	Jul 1	2 Bethesda at TW

Events shown in time zone: Eastern Time



6806 Tilden Lane, Rockville, MD 20852

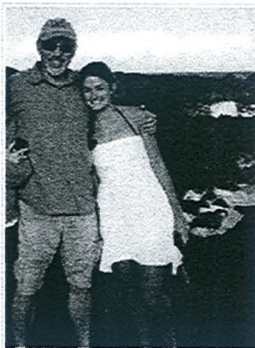
Lobby 301-984-2163 - Membership 301-255-2500

Share Report Abuse Next Blog»

Create Blog Sign In

# 1st Annual Paul and Celine Silver Memorial 5K

The 1st Annual Paul and Celine Silver Memorial 5K is scheduled for **Saturday, June 4, 2011**. The race will begin and end at **Tilden Woods Pool**, 6806 Tilden Lane, North Bethesda, MD 20852. The pool will open for check in and packet pick up at **9 am**. The race will begin at **10 am**, and will go through the Tilden Woods and Old Farm neighborhoods.



WEDNESDAY, MARCH 2, 2011

## Registration Form

1st Annual Paul and Celine Silver Memorial 5K  
Saturday, June 4, 2011- Tilden Woods Pool  
Check-in and Packet pick-up begins at 9 am

Race Starts 10 am

### REGISTRATION FORM

Name(s):

Age(s):

Address:

Phone #:

Email address:

T-Shirt Size(s):

Donation to Paul and Celine Silver Memorial Scholarships:

Registration Fee: (\$25/runner)

#### REGISTRATION DEADLINE

Please print the Registration form from this site.

Reminder: Registration is open now until May 15. Please mail all registration materials to:

Gerri Diamond  
11808 Magruder Lane  
North Bethesda, MD 20852



#### SUPPORT THE CAUSE!

If you would like to volunteer, contribute, or donate to the race, please contact Gerri Diamond (diamondgerri@gmail.com), or Kelly Carlin (kmc039@bucknell.edu). We are continuing to look for race sponsors and volunteers!

#### FOLLOWERS



1<sup>st</sup> Annual Paul and Celine Silver Memorial 5K  
Saturday, June 4, 2011- Tilden Woods Pool  
Check-in and Packet pick-up begins at 9 am  
Race Starts 10 am  
REGISTRATION FORM- DUE MAY 15, 2011

Name(s):

Age(s):

Address:

Phone #:

Email address:

T-Shirt Size(s):

Donation to Paul and Celine Silver Memorial Scholarships:

Registration Fee: **(\$25/runner)**

Total Enclosed:

**Please make checks payable to the Paul and Celine Silver Memorial Fund.  
Mail to: Gerri Diamond  
11808 Magruder Lane  
North Bethesda, MD 20852**

**Questions? Want to volunteer on race day or SPONSOR the event? Contact  
Gerri Diamond 240-418-5088, [diamondgerri@gmail.com](mailto:diamondgerri@gmail.com) or Kelly Carlin,  
[kmc039@bucknell.edu](mailto:kmc039@bucknell.edu)**



## Special Events

---

A permit is required to hold an event within the County right-of-way. All Charitable Organizations, Non-profit Organizations, Private Residences and any event sponsored by Montgomery County must have an approved permit.

Requests should be submitted to:

Division Traffic Engineering and Operations  
Traffic Engineering Studies Section  
100 Edison Park Drive, 4th Floor  
Gaithersburg, Maryland 20878

To e-mail request [Click Here](#)  
Telephone: 240.777.6000  
Fax: 240.777.2080

### Download Applications:

[Block Parties](#)  
[Parades, Races, etc.](#)

Traffic and Safety · Montgomery County Department of Transportation  
100 Edison Park Dr, 4th Floor · Gaithersburg, Maryland 20878 · [mcdot.TrafficOps@montgomerycountymd.gov](mailto:mcdot.TrafficOps@montgomerycountymd.gov)  
· telephone: 240-777-2190 · fax: 240-777-2080 ·

[Alert](#) | [Awards](#) | [Privacy Policy](#) | [User Rights](#) | [Accessibility](#) | [Disclaimer](#) | [County Code](#) | [RSS](#) | [Blogs](#)  
Copyright 2002- 2011 Montgomery County Government All Rights Reserved

**MONTGOMERY COUNTY  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF TRAFFIC ENGINEERING AND OPERATIONS (TEOS)**

**Special Event Approval Process  
Moving and Stationary Events (e.g. Races, Parades, Festivals, etc.)**

**THIS APPLICATION MUST BE MADE AT LEAST TWO (2) MONTHS  
PRIOR TO THE DATE OF THE EVENT**

For large and complex events more time should be allotted for the review and/or modification of plans and possible coordination meetings

Review the Special Event Permit Application Guidelines carefully. Understanding of and compliance with these guidelines will assist in the smooth advancement of the application.

The Event Sponsor's authorized representative completes the MCDOT Public ROW Occupancy application form and attaches the following:

- (1) **Certification of Insurance** naming Montgomery County Government as the holder. Insurance Requirements are explained in the Mandatory Insurance Requirements in the application. Signature of Sponsor's Authorized Representative is required.
- (2) A descriptive traffic control plan.  
The traffic control plan must address in detail how the sponsor will:
  - (a) minimize impact on, or alter normal traffic flow;
  - (b) provide for the safety and needs of event participants;
  - (c) implement the logistics;
  - (d) handle policing arrangements if required
- (3) A route narrative explaining the direction of travel, affected lanes, etc.
- (4) A suitable map highlighting the affected roadways.

After completing the permit application form and properly compiling the application package, the Event Sponsor's authorized representative must obtain police approval from the appropriate Montgomery County Police District(s) **before** submitting to TEOS. After receiving local police approval the applicant will submit the completed application to TEOS (applicant should retain a copy for their records). Items (1) thru (4) **must** accompany each permit application

For **ALL** events the presence of law enforcement officers and adult monitors shall be required at each signalized intersection. Monitors shall be placed at all non-signalized intersections.

If applicable, the Event Sponsor's authorized representative must secure the necessary permits from the Maryland State Highway Administration (MSHA), other public/private agencies and/or municipalities for the temporary use of their right-of-way. Advance planning is essential to ensure that all necessary permits and approvals are obtained.

Upon final determination by TEOS, we will notify the Event Sponsor's authorized representative, police and other public agencies of official approval/denial.

If you have any questions or concerns please contact our office at 240-777-6000.

## PUBLIC RIGHT-OF-WAY OCCUPANCY PERMIT

Complete all information requested in steps # 1, #2, #3. Submit completed package (All 4 sheets) to the address listed under insurance "CERTIFICATE HOLDER."

### EVENT INFORMATION (print or type all information)

**STEP # 1**

**NAME OF EVENT:** \_\_\_\_\_

**EVENT SPONSOR:** \_\_\_\_\_

**CONTACT PERSON:** \_\_\_\_\_ **DAYTIME PHONE** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

<b>EVENT</b> <b>DATE:</b> _____	<b>RAIN</b> <b>DATE:</b> _____	<b>EVENT</b> (include time to set up/clean up) <b>TIMES:</b> (From) _____ (To) _____
------------------------------------	-----------------------------------	---

**ROADWAYS AFFECTED BY THE EVENT:** (EXAMPLE: Road A between Road B and Road C.)  
**(map of route/area required)**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Attach additional sheets if necessary)

**ESTIMATED NUMBER OF EVENT PARTICIPANTS:** \_\_\_\_\_

**STEP # 2**

INSURANCE INFORMATION

- (a) Attached CERTIFICATION OF INSURANCE
- (b) Signature on Waiver

**STEP # 3**

Permittee shall coordinate with Police Department:  
(The following shall be completed by the County Police)

Signature: \_\_\_\_\_ Police District(s): \_\_\_\_\_ Date: \_\_\_\_\_  
(Police Dept. Contact) (B, G, MV/G, R,S,W)

MANDATORY INSURANCE REQUIREMENTS  
FOR R-O-W OCCUPANCY PERMITS

The permittee must obtain at their own cost and expense and keep in force and effect until termination of the event, the following insurance with insurance company/companies licensed to do business in the State of Maryland. Coverage must be evidenced by a Certification of Insurance of the insurance policies.

Permittee's insurance shall be the only coverage responding to any claim for this event.

**Commercial General Liability:** A minimum limit of liability of five hundred thousand dollars (\$500,000), combined single limit, for bodily injury and property damage coverage per occurrence including the following coverage:

- Contractual Liability
- Premises and Operation
- Independent Contractors
- Products and Completed Operations

**Additional Insures:**

Montgomery County Government **MUST** be named as an additional insured on the liability Policy.

**Policy Cancellation:** Forty-five (45) days written notice of cancellation or material change of the policy is required.

**CERTIFICATE HOLDER:**

Montgomery County Government, Department of Transportation  
Division of Traffic Engineering and Operations  
100 Edison Park Drive, 4th Floor  
Gaithersburg, Maryland 20878

**WAIVER**

*"By accepting this permit, the permittee, its successors, assigns, agents and employees agrees to indemnify, and hold harmless Montgomery County, Maryland from any activity connected to this permit and from and against any and all demands, losses, judgements, costs, or expenses (including reasonable attorney's fees) incurred by the indemnitee in connection with injuries or damages to person and or property arising out of or resulting from any activity connected with the issuance and acceptance of this permit."*

---

Signature of Sponsor's Authorized Representative

PUBLIC RIGHT-OF-WAY PERMIT  
SPECIAL REQUIREMENTS:

- (1) Signs notifying the public **must** be posted a minimum of one week prior to the event on the right side of all effected roadways where they intersect with major roadways. (see illustration "A" for sign details).

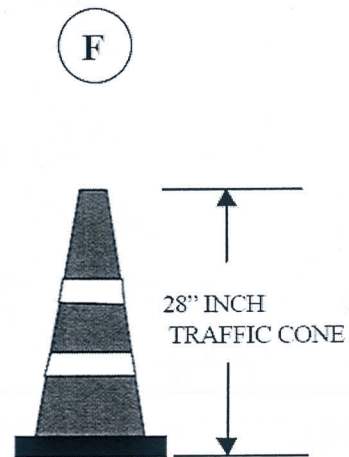
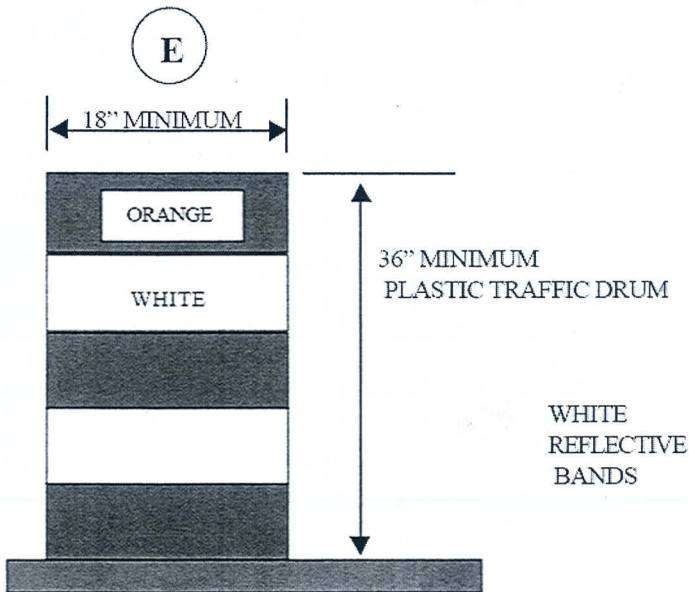
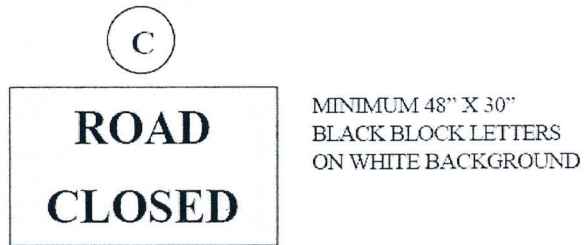
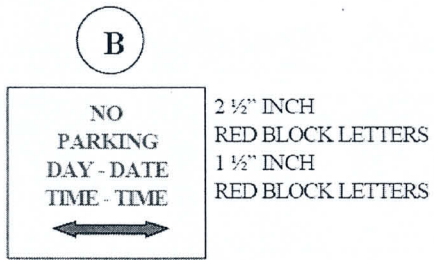
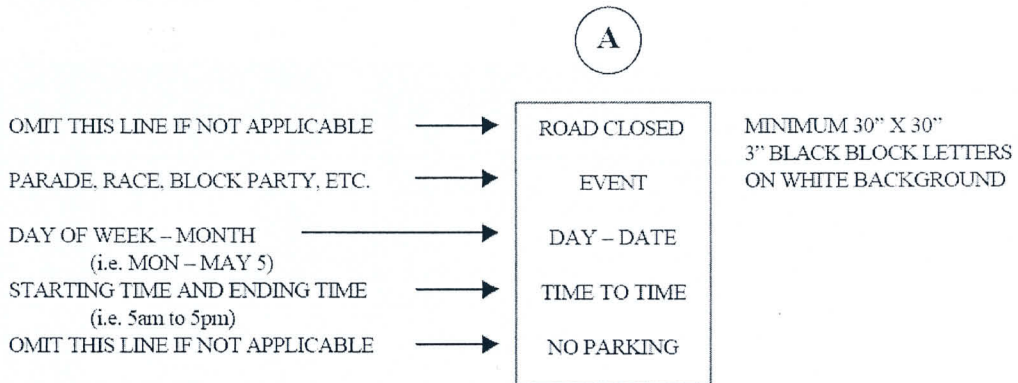
When applicable, "ROAD CLOSED" signs **must** be posted the day of the closure at the last **major** intersection where motorists can detour to avoid the closure (see illustration "D") and at the actual point of the closure (see illustration "C").

Lettering and symbols on the above described signs **must** be legible for passing motorists to easily see and comprehend.

- (2) Temporary parking restriction signs **must** be posted 72 hours in advance and remain posted for the duration of the event at locations where parked vehicles would conflict with the event. See illustration "B" for the required sign message and dimensions. Lettering and symbols **must** be legible enough to be easily seen and comprehended.
- (3) Traffic drums or cones (see illustration "E" and "F") **must** be used at all points of closure — starting areas, the crossing of intersections, locations where the route changes directions, and all driveways (except single family homes).
- (4) For the closure of a lane or a portion of a lane along a segment of roadway, the permittee **must** provide 28" high traffic cones or traffic drums placed no further than 40' apart to separate and define the portion of the roadway to be used for vehicle travel from that reserved for the event.
- (5) Traffic drums or cones **must** be in place just prior to the times allocated for the event (as specified herein) and removed as soon as the last participant clears each section of the event route (no later than the ending time as stated on the permit).
- (6) For races or moving events, a "LEAD and "CHASE" vehicles **must** be used in front and behind to insure the safety of all participants during the event.
- (7) Residents and/or businesses of all properties fronting the subject road sections and/or those whose access is directly impacted by the event **must** be notified in writing by the permittee a minimum of 72 hours prior to the event.
- (8) Vehicle access to and from properties abutting and/or directly affected by the event **must** be permitted at all times: **EMERGENCY VEHICLES SHALL BE PERMITTED THROUGH PASSAGE AT ALL TIMES.**

- (9) Permittee **must** secure police assistance at locations that require complete closure of the roadway and at all signalized and/or major intersections where the participants may be crossing without regard to existing traffic control devices.
- (10) Competent adult monitors **must** be stationed at all other intersecting roadways and/or driveways (except those of signal family homes) not controlled by police.
- (11) Competent adult monitors **must** have copies of "Detour Maps" to inform passing motorists of alternate routes around the event.
- (12) If applicable, permittee **must** secure the necessary permits from Maryland State Highway Administration and/or other agencies or municipalities for the temporary use of their right-of-way.
- (13) The "Double Yellow Center Line" rule **shall** be enforced at all times during the race. This rule also applies to any practice runs the participants partake in prior to the race.  
*"The Double Yellow Center Line Rule prohibits any participant from crossing the center line of any roadway during practice or the actual race with the exception of the start of the race and the sprint to the finish line at the end of the race".*
- (14) A "Rolling Road Block" type of closure **shall** be used during the event. At no time will any county roadways be closed to motorists during the event, except during the start of the race and the finish of the race.
- (15) "Practice Runs" are allowed only on the roadways as stated in the permit and **must** be held on the day of the event and only during the times as stated in the permit.

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Division of Traffic Engineering and Operations





Via facsimile (240-777-6665) and USPS

B. J. Sadoff  
6804 Stonewood Terrace  
Rockville, MD 20852  
(T) 703-816-4091  
(F) 703-816-4100

April 8, 2011

Mr. Martin L. Grossman  
Director, Office of Zoning and Administrative Hearings  
Montgomery County Board of Appeals  
Office of Zoning and Administrative Hearings  
100 Maryland Avenue  
Suite 200  
Rockville, MD 20850

Subject: Special Exception Petition CBA-1383-A Tilden Woods Recreation Assoc., Inc.  
(Tilden Woods Pool)

Dear Mr. Grossman,

This is in response to your email of April 5, 2011 (addressed "To all parties to the Tilden Woods case") that set a deadline of 5 pm today for anyone wishing to be heard on "the question", which I understand to be whether an extension of the May 6, 2011 Hearing date set in the OZAH Order of January 21, 2011 should be granted at the request of the MNCPPC Technical Staff due to the Petitioner's delay in providing complete information. Subsequent correspondence from OZAH has not indicated that today's OZAH deadline has been extended, such as by MNCPPC Technical Staff extension of April 5, 2011 or Petitioner's proffer of April 7, 2011. I understand from your email of April 7, 2011 that a further opportunity will be provided for interested parties to comment on any changes to the major modification submitted by the Petitioner/Applicant.

I have been requesting MNCPPC Technical Staff input for some time. The Petitioner's actions, whether by omission or commission, have delayed and frustrated the process of special exception oversight and review by the Board of Appeals, OZAH and, most recently, MNCPPC Technical Staff. Adverse consequences of further delay resulting from the Petitioner's failure to timely act should be borne by the Petitioner, and not the neighbors. The latest delay is further evidence of the Petitioner's inability and/or unwillingness to timely meet their burden of proof and/or persuasion, as described for example, in §59-G-1.21 and specifically referred to in § 59-A-4.48(a) of the Zoning Ordinance.

In the event the Hearing of May 6, 2011 is delayed as a result of the Petitioner's action or inaction, you are requested to order and/or recommend that the Board of Appeals resolve that uses of the Petitioner's pool and property not specifically provided for in the original special exception grant are prohibited until such time as the Board of Appeals authorizes alternative uses of the pool and property. Specifically, for example, you are

Mr. Martin L. Grossman  
Special Exception Petition CBA-1383-A - Tilden Woods Recreation Assoc., Inc.  
April 8, 2011  
Page 2

requested to order and/or recommend that the Board of Appeals resolve that at least the following are prohibited as being inconsistent with the original special exception grant and the pending status of the Petitioner's request for modification of same:

- (1) use of amplified music or other amplified sound, noisemakers, horns, drums or other musical instruments;
- (2) use of the pool and property by non-members or the general public;
- (3) use of the pool and property for swim meets or swim meet warm ups or other operations, by pool members, guests or employees, outside the originally granted hours of operation;
- (4) use of the pool and/or property for "Divisional" or "Mini-Meet" or other multi-swim-team competitive or non-competitive events;
- (5) use of the pool and/or property for special events and activities not related to operation as a community swimming pool (i.e., 5K run, marathons, Halloween Party, etc.).

The requested action is believed to further the goal of enabling the Petitioner to pursue appropriate activities this season at the subject site while simultaneously protecting the neighborhood by ensuring limits on activities at the subject site during this year's swim season.

Thank you for your consideration.

Sincerely,



B. J. Sadoff

cc: (via USPS)

Ms. Katherine Freeman  
Executive Director  
Montgomery County Board of Appeals  
100 Maryland Avenue  
Suite 217  
Rockville, MD 20850

Mr. Carlton Gilbert  
Technical Staff - Development Review Division  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Mr. Martin L. Grossman  
Special Exception Petition CBA-1383-A - Tilden Woods Recreation Assoc., Inc.  
April 8, 2011  
Page 3

Shahriar Etemadi  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Ed Axler  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Steve Findley  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Soo Lee-Cho, Esq.  
Miller, Miller & Canby  
200-B Monroe Street, Rockville, MD 20850

via facsimile and UPS

April 14, 2011

Mr. Carlton Gilbert  
Technical Staff - Development Review Division  
M-NCPPC  
Montgomery County Planning Department  
8787 Georgia Ave  
Silver Spring, MD 20910

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Mr. Gilbert,

Please consider the following comments, with my comments of March 7, 2011, in response to the Petitioner's revised Statement of Operations filed April 8, 2011. In the event you are not able to consider these comments prior to submission of your recommendations to the Planning Board, I request that these comments be considered by the Planning Board in addition to or as a supplement to your report and recommendations.

Attached as Exhibit BJS-131 is a red-lined version of the Petitioner's Statement of Operations filed December 30, 2010 as compared to the revised Statement of Operations filed April 8, 2011, wherein the substantial additional activities are shown as underlined text and deleted text is shown in strike through. The late filing of the Petitioner's revised Statement of Operations is contrary to the Petitioner's statements of November 19, 2010 to OZAH (see CBA-1383 Exhibit No. 94) that Petitioner's Statement of Operations was prepared and ready to file, and representations to the Board of Appeals of October 13, 2010 (see CBA-1383 Exhibit No. 85) that the Petitioner was in the process of finalizing its proposed Statement of Operations.

The revised Statement of Operations of April 8, 2011, adds provisions for at least the following substantial expansions of use of the property as compared to the originally-filed proposed Statement of Operations:

- (1) an operating season of May 1 through October 31;
- (2) an additional multi-swim team "mini meet";
- (3) addition of a 5K Run; and
- (4) addition of non-member "neighborhood events" (including "Doggie Dip", elementary school graduation party and sports tournaments).

The expanded revised Statement of Operations has been filed "in response to Technical Staff's request for additional information". See Petitioner's email of April 7, 2011 addressed to OZAH. Your email of April 6, 2011 states that the

Mr. Carlton Gilbert

April 14, 2011

Page 2

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Technical Staff requested additional information in early February 2011 and that Petitioner has been "reluctant to provide staff with this information." The Petitioner's actions, whether by omission or commission, continue to delay and frustrate the process of special exception oversight and review by the Board of Appeals, OZAH and, most recently, MNCPPC Technical Staff. Adverse consequences of this further delay resulting from the Petitioner's own failure to timely act should be borne by the Petitioner, and not the neighbors. The neighbors should not be required to absorb the ever-expanding activities of the Petitioner at the pool site. Consideration of the following with regard to specific aspects of the Petitioner's revised Statement of Operations is requested.

### Amplified Sound

The Petitioner's MEMORANDUM of April 8, 2011 accompanying the revised Statement of Operations additionally asserts that "applicant is requesting the ability to have CD player type equipment on the site to play background music for certain "Organized Events" more fully detailed in the revised Statement of Operations." This is not a substantive or substantial change however from the Petitioner's current operation and earlier proposed Statement of Operations. Specifically, the Petitioner has been using portable sound equipment supplied by members to produce substantial noise.

The revised Statement of Operations asserts that "No music will be played by a means different from, or to a level greater than that of a usual and conventional home reproduction system, i.e., CD player/stereo." See page 19, §I(5).(a.) of the Petitioner's revised Statement of Operations. Petitioner's earlier MEMORANDUM of February 15, 2011 states that "the Association does not own/operate its own speaker/sound system but utilizes portable equipment made available by members of the Association." See page 2, ¶ 4 of the Petitioner's MEMORANDUM. The currently used systems are therefore "usual and conventional home reproduction system" from the Petitioner's members. While the revised Statement of Operations excludes a "speaker system described above in Section III.G.4.a." from being used to play music, the revised Statement of Operations does not include a "Section III.G.4.a."

The Petitioner's latest vague and indefinite descriptions, and assurances of use of only "CD player type equipment" and "usual and conventional home reproduction system[s]", fail to demonstrate that the non-inherent use of amplified sound will not have adverse effects. If history is a guide, the Petitioner's use of amplification equipment at the pool property will have adverse effects. I again request recommendation of the requested conditions described in my letter of March 7, 2011.

Mr. Carlton Gilbert

April 14, 2011

Page 3

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

### Operating Season

The Petitioner's traditional use of the pool and property has been, in the past 16 years, from Memorial Day weekend through Labor Day, with reduced hours from Memorial Day through the close of Montgomery County Schools for the summer. Schedules of past pool seasons are of record and testimony has been given by one of the Petitioner's Board members confirming this pool season.

The currently approved hours (i.e., 9 am to 9 pm, Monday through Saturday and 11 am to 9 pm on Sunday, from Memorial Day through Labor Day) as operated by the Petitioner over the past two years (i.e., where there has been no lock-in event past 11pm), would result in about 1128 hours of operation if practiced this pool season. Attached as Exhibit BJS-132 is a Table demonstrating this calculation, wherein the dates of the B meets and minimeet have been arbitrarily selected and the extended hour activities have been included for late clean up from B meets and late night set up before home A meets. These additional late activities have been the norm in past years.

As also shown in the attached Table, the Petitioner's proposed hours of operation and additional activities described in the April 8, 2011 revised Statement of Operations increases the total hours of operation to about 2566 hours for the "season", or a 127% increase in operating hours.

The attached Table also demonstrates that even with reductions in operations for closing between scheduled activities, such as between the proposed early swim for members and early swim team practice and/or for the pool actually closing at 9:30 pm after B meets and/or for no late night set up before home A meets, the total proposed hours of operation is only reduced to about 2471 hours, or a 119% increase in operating hours.

The following Table summarizes the results of the attached Exhibit BJS-132:

Hours of Operation based on last two years of operation	1128
Hours of Operation based on experience last two years of operation and April 8, 2011 revised Statement of Operations	2566
Hours of Operation based on experience last two years of operation and April 8, 2011 revised Statement of Operations LESS gap in operations suggested in revised Statement of Operations	2563
Hours of Operation based on experience last two years of operation and April 8, 2011 revised Statement of Operations less (1) gap in operations suggested in revised Statement of Operations; and (2) hours if 2 B meets close at 9:30, no Friday set-up before A home meets, and no additional time for minimeet	2554

Mr. Carlton Gilbert

April 14, 2011

Page 4

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Hours of Operation based on experience last two years of operation and April 8, 2011 revised Statement of Operations LESS (1) gap in operations suggested in revised Statement of Operations; and (2) hours if 2 B meets close at 9:30, no Friday set-up before A home meets, and no additional time for minimeet; PLUS lock-in hours	2561.5
Hours of Operation based on experience last two years of operation and April 8, 2011 revised Statement of Operations LESS (1) gap in operations suggested in revised Statement of Operations; (2) hours if 2 B meets close at 9:30, no Friday set-up before A home meets, and no additional time for minimeet; and (3) hours between early swim and operation hours; PLUS lock-in hours	2471.5

The Petitioner's revised Statement of Operations, with additional special swim team warm ups and practices, early morning swim, extended hours for B meets, an overnight camping "lock-in", extended operations from May 1 through October 31, etc. results in an **additional 1438 hours** of operation at the site. The Petitioner's revised Statement of Operations therefore increases use at the site by 127%.

"Mini-meet"

The "mini-meet" is small in name alone. The meet hosted 205 swimmers in 2009 and 214 swimmers in 2010, according to records available on the Petitioner's web site. The meet involves swimmers from multiple teams. By comparison of number of swimmers, the meet is on a scale of a Divisional meet which in 2009 and 2010 involved 236 swimmers from the five (5) teams of the MCSL A Division. The Petitioner has admitted in testimony that the pool and property is "too small" to host Divisional meets. The property does not "have the parking and the facility to be able to host those meets". Moreover, the Petitioner "know[s] that it [hosting divisional meets] would have a negative impact on the community." See Testimony of Ms. Ship (TWRA President), page 100, lines 13-21 of the Transcript of Board of Appeals Hearing of April 30, 2010. The limitations of the subject site make operation of the mini-meet a similar burden on the neighborhood.

Further, as there is no league pressure to start the additional non-MCSL Time Trial meet at 9 am on a Saturday, warm ups for this Saturday meet should not be required before the normal 9 am opening time of the pool and property. There is no reason to burden the neighborhood with yet another early Saturday morning start of a swimming event. The Time trial meet should not require an early morning warm up or start time.

Mr. Carlton Gilbert

April 14, 2011

Page 5

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

### Sporting events and 5K run

Contrary to the suggestion in Petitioner's April 8, 2011 papers, the 5K run was advertised as early as March 2, 2011 on the internet and enrollment has not been limited to participants from any geographic area. Current enrollment is about 100 participants according to the Facebook page advertising the run. The run has been further advertised generally on the Walter Johnson HS listserve.

The Petitioner has received a special exception to operate as a community swimming pool. The Petitioner would apparently prefer to act and operate as a private club or sporting facility. See Petitioner's email of April 8, 2011 (5:25 pm) addressed to Mr. Grossman and the expanded sporting operations requested in the Petitioner's revised Statement of Operations.

According to § 59-A-2.1 of the Zoning Ordinance, "the right to use [the swimming] pool is restricted to such families [i.e., members] and their guests." A Private club, like a community swimming pool, is operated for the benefit of its members and not open to the general public. The use of a community pool therefore is additionally limited. Section 59-G-2.56(d) additionally provides for additional requirements to "safeguard the general community interest and welfare" in the case of a community swimming pool.

More importantly, Private clubs, authorized under § 59-G-2.42 of the Zoning Ordinance, do not enjoy the exclusion from the requirement of § 59-G-1.21(a) provided in § 59-G-2.56 for community swimming pools. The Petitioner should not be permitted to expand their operations by comparisons to activities allowed by a private club while also seeking the protections of not being required to meet the general conditions standards of § 59-G-1.21(a). See for example, pages 9, 22 and 23 of Hearing Examiner's Report dated June 28, 2010 (CBA-1383 Exhibit No. 80), page 90, line 14 through page 92, line 16 of the April 30, 2010 Hearing Transcript .

I appreciate your efforts and further consideration of these comments and evidence. The conditions requested in my letter of March 7, 2011 are believed to further the goal of enabling the Petitioner to pursue appropriate activities at the subject site while simultaneously protecting the neighborhood by ensuring limits on activities at the subject site during the swim season.



Mr. Carlton Gilbert

April 14, 2011

Page 6

Re: Tilden Woods Recreation Association (Special Exception CBA-1383-A)

Sincerely,



B. J. Sadoff

6804 Stonewood Terrace

Rockville, MD 20852

(T) 703-816-4091

(F) 703-816-4100

Attachments:

BJS-131: Red-line comparison of Statements of Operation.

BJS-132: Summary of hours of operation Table

cc: (via USPS (except OZAH by facsimile) - with noted attachments)

Martin L. Grossman

Director

Office of Zoning and

Administrative Hearings

Montgomery County Board of

Appeals

Office of Zoning and

Administrative Hearings

100 Maryland Avenue

Suite 200

Rockville, MD 20850

Ed Axler

M-NCPPC

Montgomery County Planning Department

8787 Georgia Ave

Silver Spring, MD 20910

Steve Findley

M-NCPPC

Montgomery County Planning Department

8787 Georgia Ave

Silver Spring, MD 20910

Shahriar Etemadi

M-NCPPC

Montgomery County Planning

Department

8787 Georgia Ave

Silver Spring, MD 20910

Soo Lee-Cho, Esq.

Miller, Miller & Canby

200-B Monroe Street

Rockville, MD 20850

**TILDEN WOODS RECREATION ASSOCIATION, INC. CASE NO. CBA-1383-A**  
**STATEMENT OF OPERATIONS**

**I. Introduction / Background****INTRODUCTION / BACKGROUND**

The Tilden Woods Recreation Association, Inc. is a Maryland non-profit corporation organized to own and operate a community swimming pool. The subject

property is known as Parcel "B" of the Tilden Woods Subdivision, located at 6806 Tilden Lane, Rockville, Maryland and consists of approximately 1.92 acres of land in the R-90 Zone. The Association originally purchased the subject property in 1962 and obtained approval of a special exception for a community swimming pool from the Board of Appeals in March of 1963, in Case No. CBA-1383. In developing this Statement of Operations, the Association seeks to improve and further enhance its ability to serve and be an asset to the surrounding community. By detailing its operational parameters and establishing a Neighborhood Liaison Committee (further discussed in Section VI below) as other similar community swimming pool organizations in Montgomery County have done in recent years, it is the Association's intent to foster and facilitate more open lines of communication with its neighbors and to provide a structured and accessible means of addressing concerns and/or issues that may arise with regard to the Association's operations from time to time.

**II. Membership****MEMBERSHIP**

The approved special exception permits a total membership of 350 families. No change to the approved membership level is being requested in Case No. CBA-1383-A. Each active family membership (i.e., adult family, young family, single parent family or couple membership) is equivalent to one (1) family membership. Each active single membership (i.e., one individual) is equivalent to one-half (1/2) a family membership. Inactive memberships will not be included.

**III. Operation****OPERATIONS**

**A. Hours of Operation****Operating Season**

**1. The approved hours of operation under the original 1963 Opinion of the Board are as follows: "The hours of operation shall be from 9:00a.m. to 9:00p.m., six days a week, and from**

**11:00a.m.****Background: The Swim Club was originally approved by the Board of Appeals with no restriction/limitation on the months of operation. However, based on the Swim Club's historic usage of the site, the Swim Club proposes to 9:00p.m. establish herein an "Operating Season" which sets forth the allowable months of operation for the site, as follows:**

**a. Operating Season: To begin no earlier than May 1<sup>st</sup> and end no later than and inclusive of October 31<sup>st</sup> in any given calendar year.**

**b. Aside from accessing/opening the site for maintenance/security purposes, the site will be closed to any individual/group use from November 1<sup>st</sup> to April 30<sup>th</sup>.**

**2. As indicated above, the proposed Operating Season is based on the historic usage of the Swim Club site. The heaviest volume of use of the site occurs during the 14-week "Summer Swim Season", commonly accepted as beginning**

the last weekend of May (i.e., Memorial Day weekend) and ending after the first weekend in September (i.e., Labor Day weekend). However, since the Swim Club's pools are heated, the Swim Club has in years past had occasion to open its swimming pool earlier and close the pool later, depending on when the warm weather arrives/leaves in a given season. In addition, the proposed Operating Season is to accommodate allowable special events on the site (discussed in more detail under Section 1II.E. below) which can occur beyond the 14-week "Summer Swim Season".

## **B. Swim Meets**

**1. Background:** The Swim Club participates in the Montgomery County Swim League (MCSL), which coordinates competitive swim meets between/amongst swim clubs organized throughout the County, known as "A" meets held on Saturday mornings. The Swim Club also takes part in "B" meets held on Wednesday evenings that are independently organized amongst swim clubs. The "A" meets always get scheduled on Saturdays and "B" meets always on Wednesdays, but if a particular meet gets canceled due to severe weather on the scheduled day, it could get rescheduled to the following day or evening. The "Competitive Swim Meet Season" (hereinafter "Meet Season") runs from mid-June to late July (approximately a 7-week period) during the Swim Club's Operating Season. Participants who compete in either of the above "A" or "B" meets are children of member families and constitute the Tilden Woods Swim Team (hereinafter "Swim Team").

### **2. Type and Number of Swim Meets That May Be Hosted at the Swim Club**

**Site:** The maximum number of competitive swim meets that might be conducted at the Swim Club site during the Meet Season is a total of nine (9) swim meets, of which a maximum of five (5) occur on Saturday mornings and a maximum of four (4) occur on a weekday evening.

a. MCSL "A" Meets: A maximum of three (3) "A" meets may be hosted at the Swim Club site each Meet Season.

i. "A" meets held at the Swim Club start at 9:00AM and end no later than 1 :00PM on Saturdays.

b. Wednesday "B" Meets: A maximum of three (3) "B" meets may be hosted at the Swim Club site each Meet Season.

i. "B" meets held at the Swim Club start at 5:30PM and end no later than 9:30PM on Wednesdays.

c. Time Trial Meet: The Swim Club conducts a "Time Trial" meet at the Swim Club site each Meet Season to determine the qualifying swimmers that will compete in the MCSL "A" meets.

i. The Time Trial Meet held at the Swim Club starts at 8:00AM and ends no later than 1:00PM on the Saturday prior to the first MCSL "A" meet.

d. Mini-Meet: The Swim Club conducts a "Mini-Meet" at the Swim Club site each Meet Season to provide younger swimmers with an opportunity to experience a competitive swim meet environment.

i. The Mini-Meet held at the Swim Club starts at 5:30PM and ends no later than 8:00PM on a weekday during the Meet Season.

e. Divisional Meet: Organizations that participate in MCSL take turns hosting a Divisional Meet at their respective sites once every 3 Meet Seasons. The Swim Club has not hosted a Divisional Meet at its site in more than 10 years, but would like to reserve the ability to do so if selected by MCSL in the future.

i. A Divisional Meet held at the Swim Club would start at 8:00AM and end no later than 1 :00PM on a Saturday.

**3. Summary of Additional Hours of Operations to Accommodate Swim**

**Meets Conducted at Swim Club Site:** [NOTE: The approved hours of operation for the Swim Club under the original 1963 Opinion of the Board

are as follows: "The hours of operation shall be from 9:00PM to 9:00PM six days a week, and from 11 :00AM to 9:00PM on Sunday. There may be six late nights of operation no later than 11:00p.m."

2. Proposed 00PM "] The following summarizes the additional hours of operation requested by the Swim Club in Case No. CBA-1383-A to better accommodate the swim meets that are hosted at the Swim Club site, described in Section III.B.2. above:

a. ~~Sundays:~~

i. ~~9:00a.m. to 11:00a.m.~~

b. ~~Early Morning Lap Swim:~~

i. ~~6:30a.m. to 7:30a.m.~~

ii. ~~Monday through Friday.~~

iii. ~~Restricted to no more than 25 swimmers.~~

c. ~~Swim Team Weekday Practice:~~

i. ~~Starting time - 8:30a.m.~~

d. ~~Advanced Swimmers' Warm-up Prior to MCSL Saturday Swim Morning. "A" Meets:~~

i. ~~6:15a.m. to 7:30a.m. No change required from Swim Club's approved hours of operation.~~

ii. ~~MCSL, currently schedules six (6) Saturday morning swim meets per year.~~

iii. ~~Restricted to no more than 25 swimmers.~~

e. ~~General Warm-up Prior to MCSL Saturday Swim Meets:~~

i. ~~7:30a.m. to 9:00a.m.~~

ii. ~~MCSL currently schedules six (6) Saturday morning swim meets per year.~~

f. ~~Swim Team - b. Wednesday Evening "B" Meets:~~

i. ~~Closing Swim Club's general closing hour extended ½ hour to no later than 9:30p.m. 30PM on a maximum of three (3) Wednesday evenings per Meet Season.~~

ii. ~~Restricted to no more than three (3) Wednesday evenings per year.~~

g. ~~Time Trials - Additional Saturday Meet One Week Prior to First MCSL Saturday Swim Meet:~~

i. ~~Starting time for Time Trial Meet - no earlier than 8:00a.m.~~

ii. ~~Advanced Swimmers' warm-up for Time Trial Meet may begin at 6:30a.m.~~

iii. ~~General warm-up for Time Trial Meet may begin at 7:00a.m.~~

h. ~~Divisional Meet - Additional Saturday Meet No More Than Once Every Three (3) Years:~~

i. ~~Starting time for Divisional Meet - no earlier than 8:00a.m.~~

ii. ~~General warm-up for Divisional Meet may begin at 6:30a.m.~~

i. ~~Annual Swim Team Lock-In: One over night Swim Team event known as the "Annual Lock-In" is permitted on one Saturday evening to Sunday morning per year, beginning at 9:00PM and ending at 6:30AM.~~

c. ~~Time Trial Meet:~~

i. ~~Swim Club's general opening hour extended 1 hour to 8:00AM on one (1) Saturday per Meet Season.~~

d. ~~Mini-Meet:~~

i. No change required from Swim Club's approved hours of operation.

e. Divisional Meet:

i. Swim Club's general opening hour extended 1 hour to 8:00AM on an additional Saturday once every 3 Meet Seasons.

**Swim Team Practice/Warm-Up Activities and Early Morning Lap Swim Program**

**1. Background:** Included in the Swim Club's modification request are changes to its approved hours of operations to better accommodate the practice and warm-up needs of its Swim Team, as well as to accommodate early morning lap swimming as an exercise option for general members of the Club.

**a. Weekday Swim Team Practice:** Members of the Tilden Woods Swim Team practice on weekday mornings starting at 8:30AM. This allows Swim Team members who have summer jobs or attend summer school or college exam prep classes to be able to practice and get to those other commitments on time.

**b. Warm-up Prior to MCSL Saturday "A" Meets:** There are a total of six (6) MCSL Saturday "A" meets held each Meet Season, of which only a maximum of three (3) are hosted at the Swim Club site each Meet Season as indicated in Section III.B.2.a. above. However, prior to each MCSL "A" meet, regardless of whether or not hosted at the Swim Club, members of the Swim Team require access to the Swim Club's pool for warm-up.

i. Warm-up for advanced swimmers would start at 6: 15AM and end by 7:30AM on Saturdays prior to every MCSL "A" meet and be restricted to no more than 25 swimmers during that period of time. ii. General warm-up for other members of the Swim Team would follow from 7:30AM to 9:00AM, but occurs only prior to an MCSL "A" meet hosted at the site.

**c. Warm-up Prior to Time Trial Meet:** As discussed in Section III.B.2.c. above, the Swim Club conducts a "Time Trial" meet at the Swim Club site each Meet Season on the Saturday one week prior to the first MCSL "A" meet. Prior to the start of the Time Trial meet, Swim Team members require early access to pool facilities to begin warm-up. i. Advanced swimmers begin warm-up at 6:30AM, with general warm-up for other members of the Swim Team starting at 7:00AM.

**d. Warm-Up Prior to Divisional Meet:** Whether or not the Swim Club is ever selected by MCSL to host a Divisional Meet at the Swim Club site, as discussed in Section III.B.2.e. above, a Divisional Meet occurs each Meet Season, prior to which Swim Team members require early access to pool facilities for warm-up.

i. Warm-up for advanced swimmers is needed prior to every year's Divisional Meet and would need to start at 6: 15AM. This pre-Divisional warm-up for advanced swimmers would be restricted to no more than 25 swimmers. . .

ii. General warm-up for all members of the Swim Team would only be necessary if the Swim Club were to be selected to host a Divisional Meet (which has not occurred in more than 10 years), but if ever selected, warm-ups for all Swim Team members would need to start at 6:30AM.

**e. Early Morning Lap Swim Program:** The Swim Club has received requests in the past from some of its membership for access to pool facilities to accommodate an early morning lap swim as an exercise option. The Swim Club would allow early morning access to pool facilities only to members that have

pre-registered for this program and would restrict participation to no more than 25 members per Operating Season.

**2. Summary of Additional Hours of Operations to Accommodate Swim Team Practice/Warm-Up Activities and Early Morning Lap Swim Program:**

[NOTE: The approved hours of operation for the Swim Club under the original 1963 Opinion of the Board are as follows: "The hours of operation shall be from 9:00PM to 9:00PM; six days a week, and from 11 :00AM to 9:00PM on Sunday.

There may be six late nights of operation no later than 11: 00PM "1

The following summarizes the additional hours of operation requested by the Swim Club in Case No. CBA- 13 83-A to better accommodate the Swim Team practice and warm-up activities, as well as to facilitate the proposed early morning lap swim program, all described in Section 111.C. 1. above:

**a. Weekday Swim Team Practice** (during 6 weeks out of the 7-week Meet Season):

i. Access to Swim Club's pool facilities for Swim Team members beginning at 8:30AM on weekdays.

**b. Warm-up Prior to MCSL Saturday "A" Meets** (total of six (6) Saturdays during Meet Season):

i. Access to Swim Club's pool facilities for Swim Team members (advanced swimmers only; restricted to no more than 25 swimmers) at 6: 15AM. . .

ii. Access to Swim Club's pool facilities for other Swim Team members at 7:30AM (only for meets hosted at the site).

**c. Warm-up Prior to Time Trial Meet** (one Saturday during Meet Season):

i. Access to Swim Club's pool facilities for Swim Team members (advanced swimmers only) at 6:30AM . .

ii. Access to Swim Club's pool facilities for other Swim Team members at 7:00AM.

**d. Warm-up Prior to Divisional Meet** (one Saturday during Meet Season):

i. Access to Swim Club's pool facilities for Swim Team members (advanced swimmers only; restricted to no more than 25 swimmers) at 6: 15AM.

ii. Access to Swim Club's pool facilities for all Swim Team members at 6:30AM (only if meet is hosted at site).

**c. Early Morning Lap Swim Program:**

i. Access to Swim Club's pool facilities for pre-registered members from 6:30AM to 7:30AM on weekdays. Participation in program restricted to no more than 25 members per Operating Season.

**D. Swim Team - Special Event**

**I. Annual Lock-In:** The Annual Lock-In is a special event organized for members of the Tilden Woods Swim Team held at the end of each Meet Season to celebrate the accomplishments of that year's team. It is held on a weekend after the year's Divisional Meet in late July and is fully chaperoned by adult members of the Swim Club (generally the parents of Swim Team members).

a. The attendance level of this event has averaged between 125-1 50 members, including the adult chaperones.

b. The event will be fully subject to the noise restrictions outlined in Section

111.G. below and, the parking restrictions outlined in Section 111.V.B. below as

well as compliance with the Swim Club's approved Transportation Management Plan.

**B-2. Summary of Additional Hours of Operations to Accommodate Annual**

**Lock-In Event:** [NOTE: The approved hours of operation for the Swim Club under the original 1963 Opinion of the Board are as follows: "The hours of operation shall be from 9:00PM to 9:00PM, six days a week, and from 11:00AM to 9:00PM on Sunday. There may be six late nights of operation no later than 11:00PM"]

a. As indicated above, the Swim Club's current approval permits up to six (6) late nights of operation to no later than 11:00PM. The Annual Lock-In Event if only held until 11:00PM does not require approval of additional hours of operation to accommodate, but would certainly count toward one of the six (6) allowable late nights of operation.

b. The Swim Club, however, is requesting in its modification request the ability to conduct the Annual Lock-In as an "overnight" event, which would require extending the closing hour for the Swim Club on one Saturday evening (at the end of the Meet Season) from 11:00PM on Saturday to 6:30AM on the following day, Sunday.

**E. Annual Paul and Celine Silver Memorial 5K Run - Special Event**

1. The Paul and Celine Silver Memorial 5K Run is an event being organized to take place within the Tilden Woods community on an annual basis beginning Summer 2011. The purpose of the event is to raise funds for a scholarship that has been established by Nathalie Silver in honor and memory of her late husband and daughter, Paul and Celine Silver, who died in an auto-accident in 2009.

2. The Swim Club has been requested by the Silver family to serve as a principal sponsor and a host site for the event. Celine Silver was a former member of the Tilden Woods Swim Team, and the Silver family remain active members of the Swim Club.

3. Promotion efforts for the event is geared toward members of the Swim Club and Swim Team, other neighbors, supporters and friends of the Swim Club and Swim Team, as well as to those who knew Paul and Celine Silver and/or know the Silver family.

i. Pre-registration for the event will be required, with the total number of runner slots capped at 200.

ii. It is expected that many of the runners will come from the immediate neighborhood and will be asked to walk to the event as way of "warming-up" for the run.

iii. In addition to the Swim Club site, the facilities located at the adjacent M-NCPPC public park will be rented for use.

4. The event would start and end at the Swim Club site and occur during approved operating hours.

5. The pool facilities/grounds will be otherwise closed for general membership access/use during the event so there will be no overlap in use.

6. Strict compliance with the Swim Club's Transportation Management Plan to mitigate potential traffic/parking impacts created by the event on adjacent public streets will be required.

**F. Organized Events**

1. "Organized events" that have been held at the Swim Club site include the type of events commonly held at community swim clubs for members and guests, and can be grouped into several categories, as follows:

a. **Family Gathering Events:** Includes holiday socials/parties, i.e., 4th of July, Labor Day, Halloween, and events such as the Dads' Pancake Breakfast - these are family activities that involve general members of the Swim Club and their guests. They occur during normal operating hours and may include pot-lock meals or use of portable barbeques for group meals.

i. The attendance level for this type of event can range between 50-200 members and guests.

b. **Adult Parties:** Includes Swim Club anniversary party or other adult social events/fundraisers - these are social activities open to the general membership of the pool and their guests, that occur during normal operating hours or utilize one of the allowed late evenings of operation until 11:00PM, and may include food prepared by members or purchased for the event. i. The attendance level for this type of event can range between 50-200 members and guests.

c. **Member Birthday Parties:** Member birthday parties with 25 attendees or more require an additional staff to be brought on duty and, as such, are considered by the Swim Club to rise to the level of an "organized event".

i. Large birthday parties of greater than 25 attendees are a very rare occurrence at the Swim Club.

d. **Neighborhood Events:** Includes events such as the "Doggie Dip" and the Luxmanor Elementary School Graduation Party.

i. The "Doggie Dip" is an event that could occur immediately before the Swim Club closes the swimming pool for the season. Members and guests from the neighborhood are invited to let their dogs have a dip in the pool. The event generally occurs on Labor Day in the evening and ends before 9:00PM.

a) The attendance level for this type of event has been at most 50 members/guests and their pets.

b) No traffic/parking issues have ever been observed as a result of this event since most attendees walk to the site with their dog.

ii. Luxmanor Elementary School Graduation Party - members of the Swim Club graduating from Luxmanor have hosted a graduation party at the Swim Club.

a) The attendance level for this type of event can range between 50-75 members/guests.

d. **Sports Tournament:** The Swim Club may organize a volleyball tournament or other lawn game tournament for members and guests during the Swim Club's Operating Season. There is only one sand volleyball court and limited lawn area on site. As such, tournaments do not draw large crowds and never generate any parking issues.



i. The attendance level for this type of event ranges between 25-50 members and guests.

2. The total number of "organized events" held at the Swim Club generally do not exceed ten (10) per Operating Season.

a. All organized events occur only during normal operating hours and no more than one (1) organized event is scheduled to occur at any one time on the site.

b. In addition, such organized events are scheduled by the Swim Club such that they avoid overlap with any swim meets to be hosted at the site.

3. None of the "organized events" listed above have created traffic/parking issues such as overflow parking onto adjacent public streets or queuing/stacking at the site entrance in the past. However, precautions will be undertaken by the Swim Club for any "organize event" held on site pursuant to measures outlined in the Transportation Management Plan herein to ensure that parking/traffic impacts to adjacent residential neighbors, if any, are minimized.

#### **G. Other Events/Activities**

1. The following describes certain other events/activities routinely offered by the Swim Club that do not rise to the level of "organized events" but rather are more accurately described as "user incentives or amenities" offered as a means of encouraging and enhancing the use and enjoyment of the Swim Club's facilities by its members and guests. These may include the following types of events/activities:

a. "Grill and Chill" Dinners by the Pool Night b. Small group birthday "swim and cake" celebrations (less than 25 attendees)

c. Bring Your Own Raft Night

d. "Age Specific" Evenings at the Pool (e.g. high school kids, middle school kids)

e. Friday Afternoon Socials for New Members

f. Friday Pre-Swim Meet - Swim Team Gatherings

g. Evening Playing Card Gatherings

h. Ice Cream/Carmen's Italian Ice Night at the Pool

#### **H. Additional Sunday Hours of Operation for General Membership**

1. **Background:** Also included in the Swim Club's modification application is a request to make the hours of operation for Sundays comparable to what was approved by the Board in 1963 for Saturdays. It appeared to the Swim Club that a later opening hour on Sunday might have been imposed for religious reasons. In light of the fact that there are members of the Swim Club who do not attend religious services on Sunday that may want access to pool facilities earlier in the morning, the Swim Club is requesting that the opening hour on Sundays be extended to 9:00AM.

#### **I. Amplification Devices**

##### 1. Restricted Hours of Use

No amplified noise shall be permitted before 9:00a.m. or after 10:00p.m., 9:30PM, unless otherwise indicated below.

##### 2. Montgomery County Noise Ordinance Compliance

Any amplified noise on-site shall strictly comply with the Montgomery County noise ordinance and in accordance with any recommendations by the noise

program manager of the Division of Environmental Policy and Compliance,  
Montgomery County Department of Environmental Protection.

—3. Swim Meet Starting System

a. Use of a standard swim meet starting system with a "buzzer" or "tone" that complies with the Montgomery County Noise Ordinance and/or other applicable guidelines, is permitted to regulate swim meets.

b. The starting device shall not be used prior to 9:00a.m. or after 9:00p.m., with the following exceptions:

i. No later than 9:30p.m. during a Wednesday evening "B" meet that extends past 9:00a.m. =PM, as specified in Section III.A.2.f.B.3.b. above.

ii. No earlier than 8:00a.m. during a Time Trial Meet or Divisional Meet, as specified in Section III.A.2.g.B.3.c. and Section III.A.2.h.B.3.e. above.

4. Speaker System

a. Two (2) portable speakers with hand-held microphone may be used during allowable hours as specified in this Section, but must be located in such a manner that sound is at all times directed toward the adjacent M-NCPPC park property to the east and away from any residential neighbors to the north, west and southwest.

b. The above speaker system may be used during swim meets and on no more than ten (10) occasions during the year and for no more than four (4) hours on each occasion.

C-used during swim meets but only to announce events and/or make necessary safety/emergency type of announcements. At no time, shall the speaker system be used for the playing of music at swim meets or on any other occasion.

5. Music may be played on the pool grounds during no more than ten (10) special events or organized events held in any Operating Season pursuant to the following restrictions:

a. No music will be played by a means different from, or to a level greater than that of a usual and conventional home reproduction system, i.e., CD

player/stereo. Under no circumstances shall the speaker system described above in Section III.G.4.a. be used for the playing of music on the pool grounds.

b. Use of non-amplified acoustic instruments to play only the National Anthem at the start of a swim meet may be allowed.

c. On no occasion will the County Noise Ordinance be violated.

J. Lighting

1. All internal and external lights will be turned off within  $\frac{1}{2}$  hour of closing.

IV. Parking**PARKING**

**A.** Vehicles arriving or dropping off passengers prior to 7:30a.m. for Swim Team warm-ups/meet preparation and/or early morning lap swimming shall be permitted to park and/or drop off only in the eastern end of the parking lot, in order to minimize any potential disturbance to adjacent residences.

**B.** Vehicles either leaving from or arriving to pick up individuals at the conclusion of the all-overnight Annual Lock-In event at or about 6:30a.m. the following

Sunday morning, shall park in or pick-up individuals from the eastern end of the parking lot, in order to minimize any potential disturbance to adjacent residences. In addition, participating families will be required to carpool with at least three (3) Lock-In attendees per vehicle.

**C.** -To improve safety at the main driveway entrance, the Association shall prohibit vehicles from engaging in drop-off or pick-up activity at or near the main driveway entrance located off of Tilden Lane by posting a sign prohibiting such activity, as well as by discouraging members and members' children from standing at or near the driveway entrance by having staff periodically monitor and warn individuals away from the area.

**V. ~~Employees~~ EMPLOYEES**

The Swim Club does not directly employ individuals, but contracts with a management company that provides staff for operational management and maintenance of pool facilities. The maximum number of employees/staff from the management company (i.e., manager, assistant manager, maintenance, lifeguards, coaches, etc.) present on the site at any one time shall not exceed twelve (12).

**VI. ~~Neighborhood Liaison Committee~~ NEIGHBORHOOD LIAISON COMMITTEE**

The Association shall establish a Neighborhood Liaison Committee (NLC) at the start of each year by distributing a letter to adjacent -neighbors requesting that those interested in participating in the NLC that year respond with their intent to do so. The Association will then convene the NLC meeting in April or early May, at which time a schedule of the Association's anticipated swim meets and other activities will be provided.

During the Association's most active months of June, July, August and September, the Association shall re-convene the NLC within ten (10) business days of receipt of a request for a further meeting by any participant of the NLC.

Hours of Operation listed in decimal format (i.e. 6:30 am = 6.5, 9 am = 9.00 etc.)	Currently approved opening hour	Closing hour based on last two years of operation	Daily hours of operation based on past two years	Opening hour requested in April 8, 2011 Statement of Operations revised	Closing hour requested in April 8, 2011 Statement of Operations (no specific closing swim; 2 B meets & minimeet until 11pm as traditionally runs late for clean up)	Daily hours of operation based on last two years experience and as proposed in April 8, 2011 Statement of Operations revised	Less gap in operation suggested by April 8, 2011 Statement of Operations revised	Less hours if 2 B meets close at 9:30, no Friday set-up before A home meets, and no additional time for minimeet	Additional hours of operation to include requested "lock in"	Less hours if property closed between early swim and general opening (not specifically described in April 8, 2011 Statement of Operations)	Event
	Sunday, May 01, 2011		9.00	21.00	12.00						
	Monday, May 02, 2011		6.50	21.00	14.50					1.50	
	Tuesday, May 03, 2011		6.50	21.00	14.50					1.50	
	Wednesday, May 04, 2011		6.50	21.00	14.50					1.50	
	Thursday, May 05, 2011		6.50	21.00	14.50					1.50	
	Friday, May 06, 2011		9.00	21.00	12.00						
	Saturday, May 07, 2011		9.00	21.00	12.00						
	Sunday, May 08, 2011		6.50	21.00	14.50					1.50	
	Monday, May 09, 2011		6.50	21.00	14.50					1.50	
	Tuesday, May 10, 2011		6.50	21.00	14.50					1.50	
	Wednesday, May 11, 2011		6.50	21.00	14.50					1.50	
	Thursday, May 12, 2011		6.50	21.00	14.50					1.50	
	Friday, May 13, 2011		6.50	21.00	14.50					1.50	
	Saturday, May 14, 2011		9.00	21.00	12.00						
	Sunday, May 15, 2011		9.00	21.00	12.00						
	Monday, May 16, 2011		6.50	21.00	14.50					1.50	
	Tuesday, May 17, 2011		6.50	21.00	14.50					1.50	
	Wednesday, May 18, 2011		6.50	21.00	14.50					1.50	
	Thursday, May 19, 2011		6.50	21.00	14.50					1.50	
	Friday, May 20, 2011		6.50	21.00	14.50					1.50	
	Saturday, May 21, 2011		9.00	21.00	12.00						
	Sunday, May 22, 2011		9.00	21.00	12.00						
	Monday, May 23, 2011		6.50	21.00	14.50					1.50	
	Tuesday, May 24, 2011		6.50	21.00	14.50					1.50	
	Wednesday, May 25, 2011		6.50	21.00	14.50					1.50	
	Thursday, May 26, 2011		6.50	21.00	14.50					1.50	
	Friday, May 27, 2011		6.50	21.00	14.50					1.50	
	Saturday, May 28, 2011		9.00	21.00	12.00						
	Sunday, May 29, 2011	11.00	21.00	21.00	12.00						
	Monday, May 30, 2011	13.00	21.00	21.00	14.50						
	Tuesday, May 31, 2011	13.00	21.00	21.00	14.50						
	Wednesday, June 01, 2011	13.00	21.00	21.00	14.50						
	Thursday, June 02, 2011	13.00	21.00	21.00	14.50						
	Friday, June 03, 2011	13.00	21.00	21.00	14.50						

Hours of Operation listed in decimal format (i.e. 6:30 am = 6.5, 9 am = 9.00 etc.)	Currently approved opening hour	Closing hour based on last two years of operation	Daily hours of operation based on past two years	Opening hour requested in April 8, 2011 Statement of Operations	Closing hour requested in April 8, 2011 Statement of Operations (no specific closing after early B meets & minimeet until 11pm as traditionally runs late for clean up)	Daily hours of operation based on last two years, as proposed in April 8, 2011 Statement of Operations	Less hours if property closed between early swim and general opening (not specifically described in April 8, 2011 Statement of Operations)	Less hours if 2 B meets close at 9:30, no Friday set-up before A home meets, and no additional time for minimeet	Additional hours of operation to include requested "lock in"	Event
Saturday, June 04, 2011	9.00	21.00	12.00	9.00	21.00	12.00				
Sunday, June 05, 2011	11.00	21.00	10.00	9.00	21.00	12.00				
Monday, June 06, 2011	13.00	21.00	8.00	6.50	21.00	14.50				
Tuesday, June 07, 2011	13.00	21.00	8.00	6.50	21.00	14.50				
Wednesday, June 08, 2011	13.00	21.00	8.00	6.50	21.00	14.50				
Thursday, June 09, 2011	13.00	21.00	8.00	6.50	21.00	14.50				
Friday, June 10, 2011	13.00	21.00	8.00	6.50	21.00	14.50				
Saturday, June 11, 2011	9.00	21.00	12.00	9.00	21.00	12.00				Time Trial meet
Sunday, June 12, 2011	11.00	21.00	10.00	9.00	21.00	12.00				
Monday, June 13, 2011	13.00	21.00	8.00	6.50	21.00	14.50				
Tuesday, June 14, 2011	13.00	21.00	8.00	6.50	21.00	14.50				
Wednesday, June 15, 2011	13.00	21.00	8.00	6.50	21.00	14.50				
Thursday, June 16, 2011	13.00	21.00	8.00	6.50	21.00	14.50				
Friday, June 17, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Saturday, June 18, 2011	9.00	21.00	12.00	6.25	21.00	14.75				Away A meet
Sunday, June 19, 2011	11.00	21.00	10.00	9.00	21.00	12.00				
Monday, June 20, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Tuesday, June 21, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Wednesday, June 22, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Thursday, June 23, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Friday, June 24, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Saturday, June 25, 2011	9.00	23.00	14.00	6.25	23.00	16.75				Away A meet & adult party
Sunday, June 26, 2011	11.00	21.00	10.00	9.00	21.00	12.00				
Monday, June 27, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Tuesday, June 28, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Wednesday, June 29, 2011	9.00	23.00	14.00	6.50	23.00	16.50		1.50		Home B meet
Thursday, June 30, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Friday, July 01, 2011	9.00	23.00	14.00	6.50	23.00	16.50		2.00		Late night set up
Saturday, July 02, 2011	9.00	21.00	12.00	6.25	21.00	14.75		1.50		Home A meet
Sunday, July 03, 2011	11.00	21.00	10.00	9.00	21.00	12.00				
Monday, July 04, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Tuesday, July 05, 2011	9.00	21.00	12.00	6.50	21.00	14.50				
Wednesday, July 06, 2011	9.00	23.00	14.00	6.50	23.00	16.50		1.50		Home B meet
Thursday, July 07, 2011	9.00	21.00	12.00	6.50	21.00	14.50				

Hours of Operation listed in decimal format (i.e. 6:30 am = 6.5, 9 am = 9.00 etc.)	Currently approved opening hour	Closing hour based on last two years of operation	Daily hours of operation based on past two years	Opening hour requested in April 8, 2011 revised Statement of Operations	Closing hour requested in April 8, 2011 revised Statement of Operations (no specific closing swim; 2 B meets & minimeet until 11pm as traditionally runs late for clean up)	Daily hours of operation based on last two years experience and as proposed in April 8, 2011 revised Statement of Operations	Less gap in operation suggested by April 8, 2011 revised Statement of Operations	Less hours if 2 B meets close at 9:30, no Friday set-up before A home meets, and no additional time for minimeet	Additional hours of operation to include requested "lock in"	Less hours if property closed between early swim and general opening (not specifically described in April 8, 2011 revised Statement of Operations)	Event
Friday, July 08, 2011	9.00	23.00	14.00	6.50	23.00	16.50	2.00	2.00			Late night set up
Saturday, July 09, 2011	9.00	21.00	12.00	6.25	21.00	14.75	1.50				Home A meet
Sunday, July 10, 2011	11.00	21.00	10.00	9.00	21.00	12.00					
Monday, July 11, 2011	9.00	21.00	12.00	6.50	21.00	14.50		2.00			Minimeet
Tuesday, July 12, 2011	9.00	23.00	14.00	6.50	23.00	16.50					
Wednesday, July 13, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Thursday, July 14, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Friday, July 15, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Saturday, July 16, 2011	9.00	21.00	12.00	6.25	21.00	14.75					Away A meet
Sunday, July 17, 2011	11.00	21.00	10.00	9.00	21.00	12.00					
Monday, July 18, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Tuesday, July 19, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Wednesday, July 20, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Thursday, July 21, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Friday, July 22, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Saturday, July 23, 2011	9.00	23.00	14.00	6.25	23.00	16.75			7.50		Divisional meet & lock in
Sunday, July 24, 2011	11.00	21.00	10.00	9.00	21.00	12.00					
Monday, July 25, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Tuesday, July 26, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Wednesday, July 27, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Thursday, July 28, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Friday, July 29, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Saturday, July 30, 2011	9.00	21.00	12.00	9.00	21.00	12.00					
Sunday, July 31, 2011	11.00	21.00	10.00	9.00	21.00	12.00					
Monday, August 01, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Tuesday, August 02, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Wednesday, August 03, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Thursday, August 04, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Friday, August 05, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Saturday, August 06, 2011	9.00	21.00	12.00	9.00	21.00	12.00					
Sunday, August 07, 2011	11.00	21.00	10.00	9.00	21.00	12.00					
Monday, August 08, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Tuesday, August 09, 2011	9.00	21.00	12.00	6.50	21.00	14.50					
Wednesday, August 10, 2011	9.00	21.00	12.00	6.50	21.00	14.50					

Hours of Operation listed in decimal format (i.e. 6:30 am = 6.5, 9 am = 9.00 etc.)	Currently approved opening hour	Closing hour based on last two years of operation	Daily hours of operation based on past two years	Opening hour requested in April 8, 2011 Statement of Operations	Closing hour requested in April 8, 2011 Statement of Operations (no specific closing after early swim; 2 B meets & minimeet until 11pm as traditionally runs late for clean up)	Daily hours of operation based on last two years experience and as proposed in April 8, 2011 Statement of Operations	Less hours if property closed between early swim and general opening (not specifically described in April 8, 2011 Statement of Operations)	Less hours if 2 B meets close at 9:30, no Friday set-up before A home meets, and no additional time for minimeet	Additional hours of operation to include requested "lock in"	Event
Thursday, August 11, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Friday, August 12, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Saturday, August 13, 2011	9.00	21.00	21.00	12.00	9.00	21.00	12.00			
Sunday, August 14, 2011	11.00	21.00	21.00	10.00	9.00	21.00	12.00			
Monday, August 15, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Tuesday, August 16, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Wednesday, August 17, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Thursday, August 18, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Friday, August 19, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Saturday, August 20, 2011	9.00	21.00	21.00	12.00	9.00	21.00	12.00			
Sunday, August 21, 2011	11.00	21.00	21.00	10.00	9.00	21.00	12.00			
Monday, August 22, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Tuesday, August 23, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Wednesday, August 24, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Thursday, August 25, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Friday, August 26, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Saturday, August 27, 2011	9.00	21.00	21.00	12.00	9.00	21.00	12.00			
Sunday, August 28, 2011	11.00	21.00	21.00	10.00	9.00	21.00	12.00			
Monday, August 29, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Tuesday, August 30, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Wednesday, August 31, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Thursday, September 01, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Friday, September 02, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Saturday, September 03, 2011	9.00	21.00	21.00	12.00	9.00	21.00	12.00			
Sunday, September 04, 2011	11.00	21.00	21.00	10.00	9.00	21.00	12.00			
Monday, September 05, 2011	9.00	21.00	21.00	12.00	6.50	21.00	14.50			
Tuesday, September 06, 2011					6.50	21.00	14.50	1.50		
Wednesday, September 07, 2011					6.50	21.00	14.50	1.50		
Thursday, September 08, 2011					6.50	21.00	14.50	1.50		
Friday, September 09, 2011					6.50	21.00	14.50	1.50		
Saturday, September 10, 2011					9.00	21.00	12.00			
Sunday, September 11, 2011					9.00	21.00	12.00			
Monday, September 12, 2011					6.50	21.00	14.50	1.50		
Tuesday, September 13, 2011					6.50	21.00	14.50	1.50		

Hours of Operation listed in decimal format (i.e. 6:30 am = 6.5, 9 am = 9.00 etc.)	Currently approved opening hour	Closing hour based on last two years of operation	Daily hours of operation based on past two years	Opening hour requested in April 8, 2011 Statement of Operations	Closing hour requested in April 8, 2011 Statement of Operations (no specific closing swim; 2 B meets & minimize until 11pm as traditionally runs late for Statement of Operations (clean up))	Daily hours of operation based on last two years experience and as proposed in April 8, 2011 Statement of Operations	Less gap in operation suggested by April 8, 2011 revised Statement of Operations	Less hours if 2 B meets close at 9:30 no Friday set-up before A home meets, and no additional time for minimeet	Additional hours of operation to include "lock in"	Less hours if property closed between early swim and general opening (not specifically described in April 8, 2011 Statement of Operations)	Event
Wednesday, September 14, 2011				6:50	21:00	14:50				1:50	
Thursday, September 15, 2011				6:50	21:00	14:50				1:50	
Friday, September 16, 2011				6:50	21:00	14:50				1:50	
Saturday, September 17, 2011				9:00	21:00	12:00					
Sunday, September 18, 2011				9:00	21:00	12:00				1:50	
Monday, September 19, 2011				6:50	21:00	14:50				1:50	
Tuesday, September 20, 2011				6:50	21:00	14:50				1:50	
Wednesday, September 21, 2011				6:50	21:00	14:50				1:50	
Thursday, September 22, 2011				6:50	21:00	14:50				1:50	
Friday, September 23, 2011				6:50	21:00	14:50				1:50	
Saturday, September 24, 2011				9:00	21:00	12:00					
Sunday, September 25, 2011				9:00	21:00	12:00					
Monday, September 26, 2011				6:50	21:00	14:50				1:50	
Tuesday, September 27, 2011				6:50	21:00	14:50				1:50	
Wednesday, September 28, 2011				6:50	21:00	14:50				1:50	
Thursday, September 29, 2011				6:50	21:00	14:50				1:50	
Friday, September 30, 2011				6:50	21:00	14:50				1:50	
Saturday, October 01, 2011				9:00	21:00	12:00					
Sunday, October 02, 2011				9:00	21:00	12:00					
Monday, October 03, 2011				6:50	21:00	14:50				1:50	
Tuesday, October 04, 2011				6:50	21:00	14:50				1:50	
Wednesday, October 05, 2011				6:50	21:00	14:50				1:50	
Thursday, October 06, 2011				6:50	21:00	14:50				1:50	
Friday, October 07, 2011				6:50	21:00	14:50				1:50	
Saturday, October 08, 2011				9:00	21:00	12:00					
Sunday, October 09, 2011				9:00	21:00	12:00					
Monday, October 10, 2011				6:50	21:00	14:50				1:50	
Tuesday, October 11, 2011				6:50	21:00	14:50				1:50	
Wednesday, October 12, 2011				6:50	21:00	14:50				1:50	
Thursday, October 13, 2011				6:50	21:00	14:50				1:50	
Friday, October 14, 2011				6:50	21:00	14:50				1:50	
Saturday, October 15, 2011				9:00	21:00	12:00					
Sunday, October 16, 2011				9:00	21:00	12:00					
Monday, October 17, 2011				6:50	21:00	14:50				1:50	



Hours of Operation listed in decimal format (i.e. 6:30 am = 6.5, 9 am = 9.00 etc.)	Closing hour based on last two years of operation	Daily hours of operation based on last two years of experience and as proposed in April 8, 2011 revised Statement of Operations	Opening hour requested in April 8, 2011 revised Statement of Operations	Closing hour requested in April 8, 2011 revised Statement of Operations (no specific closing after early B meets & until 11pm as traditionally runs late for clean up)	Daily hours of operation based on last two years of experience and as proposed in April 8, 2011 revised Statement of Operations	Less gap in operation suggested by April 8, 2011 revised Statement of Operations	Less hours if 2 B meets close at 9:30, no Friday set-up before A home meets, and no additional time for minimeet	Additional hours of operation requested to include "lock in"	Less hours if property closed between early swim and general opening (not specifically described in April 8, 2011 revised Statement of Operations)	Event
Tuesday, October 18, 2011	6:50	21:00	6:50	21:00	14:50	14:50			1:50	
Wednesday, October 19, 2011	6:50	21:00	6:50	21:00	14:50	14:50			1:50	
Thursday, October 20, 2011	6:50	21:00	6:50	21:00	14:50	14:50			1:50	
Friday, October 21, 2011	9:00	21:00	9:00	21:00	12:00	12:00				
Saturday, October 22, 2011	9:00	21:00	9:00	21:00	12:00	12:00				
Sunday, October 23, 2011	6:50	21:00	6:50	21:00	14:50	14:50			1:50	
Monday, October 24, 2011	6:50	21:00	6:50	21:00	14:50	14:50			1:50	
Tuesday, October 25, 2011	6:50	21:00	6:50	21:00	14:50	14:50			1:50	
Wednesday, October 26, 2011	6:50	21:00	6:50	21:00	14:50	14:50			1:50	
Thursday, October 27, 2011	6:50	21:00	6:50	21:00	14:50	14:50			1:50	
Friday, October 28, 2011	9:00	21:00	9:00	21:00	12:00	12:00				
Saturday, October 29, 2011	9:00	21:00	9:00	21:00	12:00	12:00				
Sunday, October 30, 2011	6:50	21:00	6:50	21:00	14:50	14:50			1:50	
Monday, October 31, 2011										
Hours of Operation based on last two years of operation and April 8, 2011 revised Statement of Operations		1128.00			2566.00					
Hours of Operation based on experience last two years of operation and April 8, 2011 revised Statement of Operations LESS gap in operations suggested in revised Statement of Operations					2563.00					
Hours of Operation based on experience last two years of operation and April 8, 2011 revised Statement of Operations less (1) gap in operations suggested in revised Statement of Operations; and (2) hours if 2 B meets close at 9:30, no Friday set-up before A home meets, and no additional time for minimeet							2554.00			
Hours of Operation based on experience last two years of operation and April 8, 2011 revised Statement of Operations LESS (1) gap in operations suggested in revised Statement of Operations; and (2) hours if 2 B meets close at 9:30, no Friday set-up before A home meets, and no additional time for minimeet; PLUS lock-in hours								2561.50		

