

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

(301) 495-4605

MCPB
Item# 10
9/12/02

MEMORANDUM

DATE: September 6, 2002
TO: Montgomery County Planning Board
VIA: John A. Carter, Chief, Community-Based Planning
FROM: Kathleen A. Reilly, AICP, Community-Based Planning

REVIEW TYPE: Special Exception Modification
APPLYING FOR: Private Club
APPLICANT: Aspen Hill Racquet Club
CASE NUMBER: S-583-C
REVIEW BASIS: Chapter 59
ZONE: RE-2
LOCATION: 14501 Homecrest Road
MASTER PLAN: Aspen Hill

FILING DATE: April 4, 2002
PLANNING BOARD: September 12, 2002
PUBLIC HEARING: September 25, 2002

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS:

1. The applicant shall be bound by all submitted statements and plans.
2. No increase in the individual membership cap set in 1994 and no increase in the number of employees.
3. Hours of operation are: Indoor activities 5:30 a.m. to 12:30 a.m.; Outdoor activities 7 a.m. to 11:00 p.m. Monday – Thursday; 7 a.m. to 9:00 p.m. Friday, and 7 a.m. to 8 p.m. Saturday and Sunday.
4. Compliance with Department of Permitting Services requirements for stormwater management and sediment erosion control, prior to the issuance of building permits and/or sedimentation and erosion control permits.
5. Submit a Final Conservation Plan to County Wide, Environmental Unit prior to issuance of building permits and/or sedimentation and erosion control permits. Final Forest Conservation Plan must indicate Category I Conservation Easements placed on reforestation areas as well as forest retention areas and must also indicate numbers, size, and placement of plants within all reforestation areas.

6. All terms and conditions of previously approved special exceptions remain in full force and effect.

PROPOSAL

The applicant, the Aspen Hill Club is seeking a modification to an existing special exception for a private club located at 14501 Homecrest Road, in Aspen Hill in the RE-2 Zone. The applicant is seeking to change the hours of operation for the facility, relocate an existing playground, maintain an existing accessory wood platform deck structure, relocate an existing wooden shed and add two outdoor tennis courts with lights to the site. Access to the site is from two access points along Homecrest Road, a county maintained public right-of-way.

Site - The subject site contains approximately 15.97 acres of land. It is located on the east side of Homecrest Road approximately 1,000 feet north of its intersection with Bel Pre Road. The property is rectangular in shape with approximately 712 feet of frontage on Homecrest Road. It is developed with one large butler type building that serves as its clubhouse and contains: indoor tennis courts, racquetball courts, indoor pool, exercise/fitness areas, locker rooms, lounge, offices snack bar/café, pro shop storage areas, and a children's area. Outside the clubhouse there are 13 outdoor tennis courts, 4 of these courts are enclosed with a bubble for winter play, a children's playground, a wooden pallet type deck for storage, and a wooden shed located in the required side yard setback. There are 245 parking spaces. There is also a single-family dwelling unit on the site, which is used by the club manager as a residence. The site has landscaping along all its property lines and contains undisturbed wooded areas along its northern lot line. The Department of Permitting Services (DPS) issued a violation for additional accessory structures on the site on 2/8/01. A copy of the violation is contained in Appendix 1. The Board of Appeals approved a special exception for this use in 1975. Copies of Board opinions are included in Appendix 2.

Neighborhood Description -The properties to the north are zoned R-200 and developed with single-family detached residential uses. East of the site, the property is zoned RE-2 and developed with the Argyle County Club. South of the site, the properties are zoned RE-2 and contain a special exception use for a service organization, the Wheaton Moose Lodge, (BAS-654 approved 10/25/78) several residential uses and a religious use. Southwest of the site, the properties are zoned R-200 and developed with single-family detached residential uses. West of the site and across Homecrest Road the properties are zoned either R-200 or RE-2/TDR and developed with several special exception uses, private educational use and child care center (BAS-753 approved on 10/8/80), a nursing care home, (BAS 542 approved on 3/17/77), and housing and related facilities for the elderly (BAS-1200 approved on 6/6/85) and a private riding stable (SE-280 approved on 9/24/76).

Elements of the Proposal - In support of the request, the applicant has offered the following information as a summary for the proposed use:

The applicant, The Aspen Hill Club, is seeking to modify its existing special exception as follows: to change the hours of operation; to construct two new outdoor tennis courts with lights; to relocate an existing playground to an area adjacent to the existing clubhouse; to maintain an existing accessory wood platform deck structure; and to relocate an existing wooden shed out of the required side yard setback.

The tennis courts will be constructed in front of the clubhouse and adjacent to the other outdoor courts, in the southeastern portion of the property. The hours of operation are 6:00 a.m. to 12:30 a.m. for the indoor activities and from 7:00 a.m. to "dark" for the outdoor activities. The applicant is requesting the hours of operation for indoor activities to begin at 5:30 a.m. Because new lighting is requested for the two new tennis courts, the applicant seeks an extension to the hours of operation for outdoor activities to end at 11:00 p.m. on Monday- Thursday and 9:00 p.m. on Fridays, and 8:00 p.m. and on Saturday and Sunday instead of at "dark".

An existing playground is located on the north side of the property. The applicant seeks to relocate this playground next to the existing clubhouse on the east side of the property where the children will not have to cross the parking lot to access the area. The playground is only for children of members or employees and the children are supervised.

During the summer months, the tennis bubble that covers the four outside courts is stored on a wooden platform deck structure (pallets) that is located on the south side of the property adjacent to the parking lot. During the winter months the pool patio furniture is stored on the pallets. This structure is currently located in the side yard setback and will be relocated 34 feet from the side lot line under this request. Additionally, the applicant constructed a wooden shed on the south side of the property adjacent to the parking lot and in the required side yard setback without modifying the existing special exception. Under this request the applicant proposes to relocate this shed adjacent to the existing clubhouse.

The club has 101 employees; of which 20-25 are full time and the rest are part time. The current membership is 4,074 individual members, with a maximum cap of 5,000 individuals. There is no increase in number of members or employees under this request. There are 245 parking spaces on site, additional parking is not proposed under this request.

ANALYSIS

Master Plan – The subject property is covered by the Aspen Hill Master Plan. The Master Plan provides guidelines on screening, parking and location for future special exceptions in this area. The requested modification is an existing special exception use in Aspen Hill. With respect to this modification, there is no new parking proposed. All existing parking is adequately screened from the adjoining residentially zoned properties by the existing on-site trees and vegetation. The addition of two outdoor tennis courts near the clubhouse building is in keeping with the scale of the other

existing outdoor tennis courts on this property. Existing landscaping and vegetation along the southern and eastern property lines will screen the proposed courts from the adjacent Argyle Country Club, Wheaton Moose Lodge, and residentially developed property. Finally, the Plan confirms the RE-2 zoning and private clubs are allowed by special exception in the RE-2 zone.

Transportation –The Transportation Planning staff has reviewed the submitted special exception modification and offers the following recommendations and comments. Based on information submitted by the applicant, staff finds:

No increase in the individual membership cap set in 1994 and no increase in the number of employees associated with the modification to add two more tennis courts, storage shed, a relocated playground, and open earlier in the morning.

The following list highlights previous modifications of the subject use that resulted in changing the transportation impact:

1. The special exception use was granted in April 1975 (S-373). The club was originally located on leased property (Lot 14) approximately 2,500 feet north of the intersection of Homecrest Road and Bel Pre Road. At that time, the club was limited to a maximum of 1,800 family memberships.
2. The club's facilities were relocated in March 1977 from leased Lot 14 to Lots 6, 7, and 8. The three lots were consolidated into Lot 15 and a preliminary plan was approved. Lot 15 is located approximately 1,500 feet to the south of the original site. S 373 was superseded by S- 538 with the same maximum of 1,800 family memberships.
3. In 1980, S-538 was modified to replace the existing six indoor racquetball courts and one more outdoor tennis court with one indoor tennis court, two indoor practice lanes, and two outdoor practice lanes. The different facilities were estimated to generate from 27 to 33 additional peak-hour trips.
4. In 1983, S-583 was modified to increase the maximum number of family memberships from 1,800 to 2,500.
5. In 1994, S-538 was modified to change the maximum of 2,500 family memberships to a maximum number of 5,000 individual memberships.

Lot 15, the subject lot, was recorded as a plat in 1978. If reviewed as a typical building permit for non-residential development with preliminary plan approval and on a lot recorded before July 25, 1989, further APF review would be required prior to release of building permit for additional building structures. The APF review for this special exception modification should be sufficient if needed for the APF test, if a future building permit is required for the shed and no further changes beyond that specified in this modification.

According to the Aspen Hill Master Plan, Homecrest Road is designated as a primary street, P-12, with a 70-foot right-of-way and a proposed Class III bikeway. The Homecrest Road right-of-way is currently 35 feet from the centerline along the property frontage. The nearby segment of Bel Pre Road is designated as a five-lane arterial, A-40, with an 80-foot right-of-way and an existing Class I bikeway.

The on-site parking is adequate for the activities occurring on the site except for an occasional permitted special event. For the prom parties with overnight "lock-ups" (permitted up to six per year), overflow parking is available on the Homecrest House site on the opposite side of Homecrest Road. Other permitted special events are exhibitions and tournaments twice a year, but the private club has not hosted them in recent years. The proposed modification will not affect pedestrian access and safety.

Based on the submitted traffic statement dated August 6, 2002, and clarified with the letter dated August 14, 2002, the existing land use and proposed modifications would result in the following traffic impacts:

1. The club membership will not be increased from the current 4,074 individual members to beyond the maximum of 5,000 individual memberships as granted by the Board of Appeals in their opinion dated January 5, 1994.
2. The number of employees is to remain at the current 115 persons that includes between 20 and 25 full-time persons and the rest part-time employees. The full-time work shift from 9:00 a.m. to 6:00 p.m. is within weekday morning peak period (6:30 a.m. to 9:30 a.m.) and the evening peak period (4:00 p.m. to 7:00 p.m.).
3. Opening the private club at 5:30 a.m. instead of 6:00 a.m. may attract a few additional persons, but would also spread out the early morning arrivals to use the recreational facilities. Either starting time is before the beginning (i.e., 6:30 a.m.) of the weekday morning peak period.
4. The playground is being relocated to prevent having children walk across the internal driveway from the existing child care/babysitting facility. This childcare facility is only for the members and employees and its relocation would not generate additional trips.
5. The small storage shed within the overall private club would not generate additional traffic.
6. The additional two tennis courts are estimated to generate three more peak-hour trips on a daily basis during the weekday morning and evening peak period.
7. Based on the higher weekday evening trip-generation rate in the Institute of Transportation Engineer's *Trip Generation Report*, the site-generated traffic from

the total existing and two additional courts would be 46 peak-hour trips during the evening peak period.

Based on trip-generation rates for racquet clubs in the Institute of Transportation Engineers' Trip Generation Manual, the Transportation Planning staff finds that the number of site-generated trips should not increase because the number of employees and membership cap will remain the same. Thus, a traffic study is not required to satisfy Local Area Transportation Review. Transportation planning staff finds that the proposed modification would not create an adverse impact on the nearby roadway network.

This private club is located in the Aspen Hill Policy Area. As of August 1, 2002, the remaining capacity is positive 62 jobs for the Aspen Hill Policy Area under the FY 02 Annual Growth Policy transportation staging ceilings. The proposed two tennis courts, storage shed, and relocated playground of the subject modification would not result in a larger membership cap and more employees. Thus, no additional jobs would be created in the Aspen Hill Policy Area.

Environmental – The Environmental Planning staff has reviewed the subject special exception modification and offers the following condition and comments

A Final Conservation Plan must be submitted to the County Wide, Environmental Unit, indicating a Category I Conservation Easements placed on reforestation areas as well as forest retention areas. The Final Forest Conservation Plan must also indicate numbers, size, and placement of plants within all reforestation areas.

This modification has an approved NRI/FSD and an approved Preliminary Forest Conservation Plan. The applicant will need to submit a Final Conservation Plan for review and final approval. The applicant has submitted to the Department of Permitting services (DPS) a waiver from the stormwater management requirements because there are existing stormwater management facilities on-site. DPS is reviewing this waiver request. DPS will have the final determination on this applicant's stormwater management requirements. However, the applicant will need to comply with the DPS stormwater management decision prior to issue of building permits and/or sedimentation and erosion control permits, as appropriate.

The property is located in the Lower Rock Creek watershed, Turkey Branch watershed. This subwatershed is designated as a Watershed Restoration Area and has poor stream conditions and fair habitat conditions. Efforts are underway to comprehensively examine and address stormwater retrofit, stream restorations and habitat improvements opportunities.

Compliance with Specific and General Special Exception Provisions

Sec. 59-G-2.24. Golf courses and country clubs.

The Board may authorize a golf course, country club, private club or service organization including community buildings, upon a finding that the proposed use will not adversely affect surrounding residential and agricultural uses because of noise, traffic, number of people or type of physical activity; provided, that the following standards and requirements can be met:

- (a) The provision of food, refreshments and entertainment for club or organization members and their guests may be allowed in connection with such use, provided the availability of such services is not reasonably expected to draw an excessive amount of traffic through local residential streets.

Presently, the site has an existing snack bar/café that provides food and refreshments for club members. Under this modification there is no proposed increase in the provision of food or refreshments to members and no increase in members that would draw an excessive amount of traffic through local residential streets.

- (b) All buildings shall conform to the height, coverage and setback regulations of the zone in which they are located; and all facilities shall be so located as to conform to other special exception standards.

All existing buildings conform to the height (50 feet) and coverage (maximum of 25%) requirements for the RE-2 Zone. The clubhouse meets the required setbacks of 50 feet, 17 feet, and 35 feet for the front, side and rear yards, respectively. The proposed tennis courts will be setback approximately 50 feet from the rear yard and approximately 120 feet from the side yard which complies with the accessory structure setback requirements for the RE-2 Zone of 10 and 15 feet for rear and side yards, respectively. The relocated wooden shed is 8-feet high and will be located adjacent to the clubhouse and approximately 287 feet from the side yard, and the wooden pallet storage deck will be sited approximately 34 feet from the side yard. Both structures will meet the side yard setback requirement for this zone. According to Section 59-E-3.7 of the Zoning Ordinance, for off-street parking, a private club would be required to provide 2.5 parking spaces per 1,000 square feet of total floor area, thus this use would be required to provide 218 parking spaces. The submitted proposal shows a total of 245 existing parking spaces.

- (c) All outdoor lighting shall be located, shielded, landscaped or otherwise buffered so that no direct light shall constitute an intrusion into any residential area.

The applicant has submitted a landscape and lighting plan. Staff has reviewed the landscape plan that shows additional trees and shrubs to supplement the existing landscaping in the parking areas and long a portion of the southern property line. This supplemental landscaping will screen both the wooden shed and storage pallets from the adjacent residentially zoned properties. The lighting plan shows the new lighting standards for the proposed tennis courts. This plan shows no extensive glare into the nearby residential properties. Staff finds both the proposed the landscaping and lighting plan acceptable.

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

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The non-inherent effects associated with the existing private club would include the increased impervious surfaces for the tennis courts and its effects on stormwater management, additional vehicle trips to the site, noise, lighting, and hours of operation. From the applicant's submission and statement of operations, staff does not find any non-inherent effects related to the subject application that would require a denial of the application.

Sec. 59-G-1.21. General Conditions.

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

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

The use is permissible in RE-2 Zone.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception

does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The proposed modification complies with the standards and requirements contained Section 59 G-2.42 for a private club.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with an recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Aspen Hill Master Plan supports the RE-2 zone for the subject site and the requested modification, a private club, is allowed by special exception in that zone.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The surrounding area is developed with low-density residential uses and existing special exception uses. The proposed modification will be in harmony with the general character of the surrounding neighborhood when considering above cited criteria.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed modification will not have a detrimental effect of any of these reasons.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed modification will not cause any of these effects.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The proposed modification will not increase the intensity and scope of the approved special exceptions in the surrounding area.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective on any adverse effects the use might have if established elsewhere in the zone.

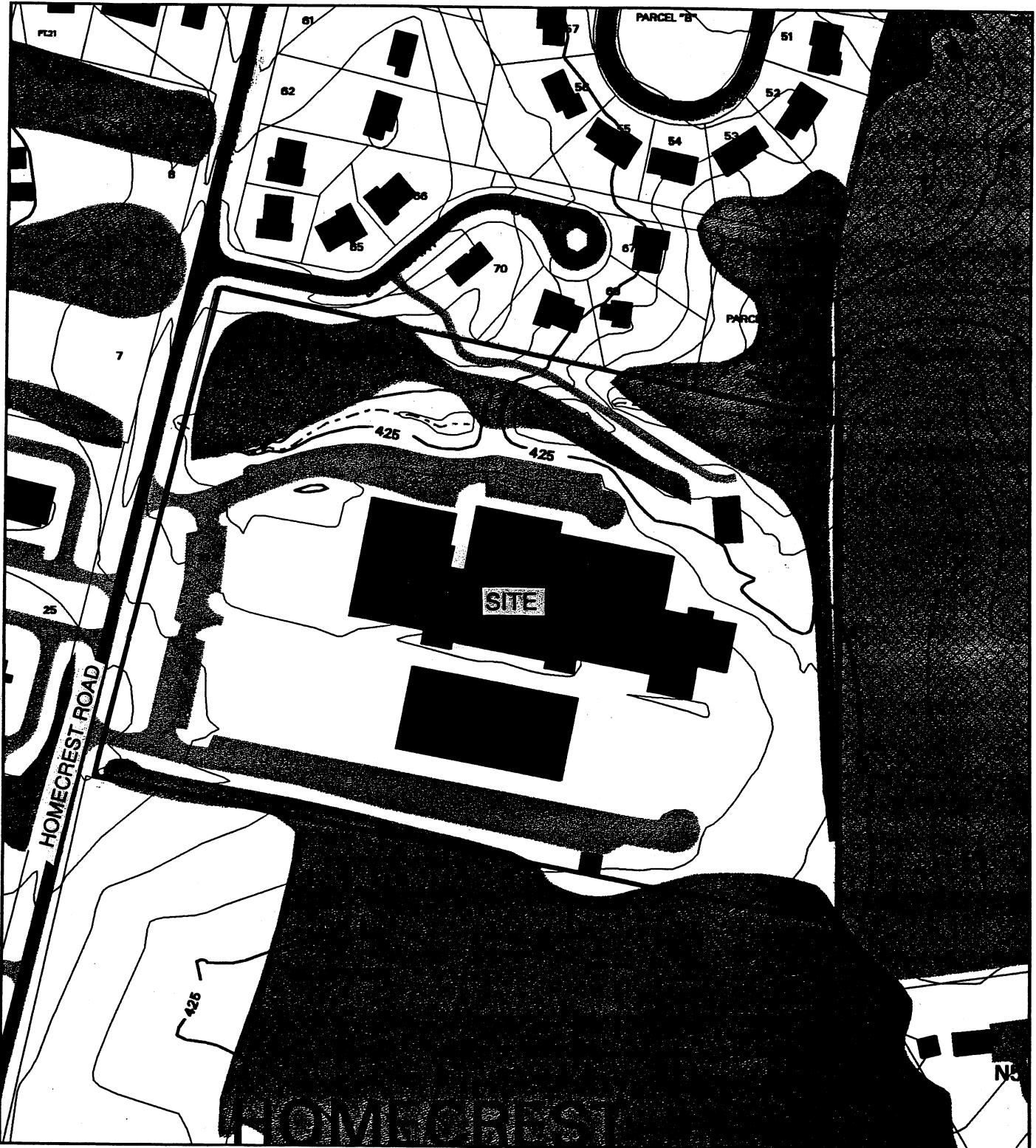
The proposed modification will not cause any of these effects.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

The proposed modification will be served by adequate public services.

RECOMMENDATION - Staff recommends approval of the submitted special exception request with the conditions stated on page 1 of this report.

VICINITY MAP FOR
S-583-C



Map compiled on September 03, 2002 at 2:51 PM | Site located on base sheet no - 210MWO2

NOTICE

The planimetric, property and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1996

Key Map



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Research & Technology Center



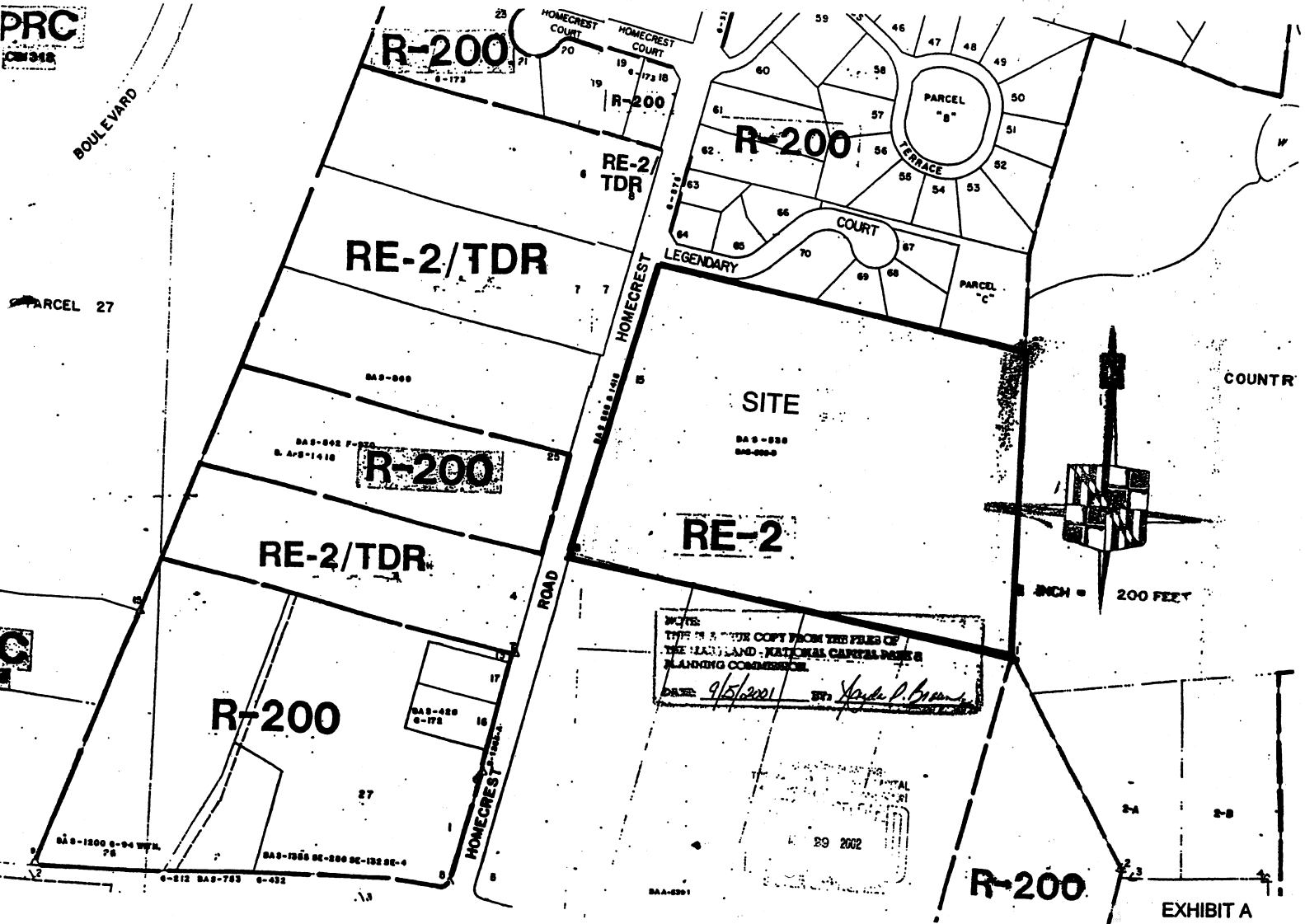
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BOULEVARD

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NOTE:
THIS IS A TRUE COPY FROM THE FILES OF
THE HIGHLAND - NATIONAL CAPITAL PLANNING
AND ZONING COMMISSION.
DATE: 9/5/2001 BY: *Angela P. Brown*

APR 29 2002

R-200

EXHIBIT A

Montgomery County, Maryland
DEPARTMENT OF PERMITTING SERVICES
250 Hungerford Drive, 2nd Floor
Rockville, Maryland 20850-4153

DEPT. OF DEVELOPMENT & REVIEW
301-495-4595



NOTICE OF VIOLATION

LOCATION: 14501 HAMPELST ROAD CASE NO.: S-538 (A+B)
SILVER SPRING MD 20906
DEFENDANT NAME: ASPEN HILL RACQUET CLUB
ADDRESS: SEE ABOVE

DATE OF VIOLATION: FEBRUARY 9, 2001
CODE SECTION: ZONING ORDINANCE 59-6-1.3(A)(1)
VIOLATION: THE DEPARTMENT AND THE BOARD OF APPEALS IS WITHOUT A LANDSCAPE LIGHTING PLAN APPROVED BY M-NCPPC. THE PROPERTY HAS ADDITIONAL ACCESSORY STRUCTURES INCLUDING A GRADE LEVEL WOODEN DECK (USED FOR THE STORAGE OF PATIO FURNITURE) WITHOUT THE BOARD'S APPROVAL OR, ISSUED BUILDING PERMITS. THE HOURS OF OPERATION FOR INDOOR ACTIVITIES HAVE CHANGED FROM 6 AM TO 5:30 AM.

CORRECTIVE ACTION TO ELIMINATE VIOLATION: SUBMIT "ANALYSIS" LANDSCAPE/LIGHTING/PARKING PLAN TO THE DEVELOPMENT AND REVIEW SECTION AT M-NCPPC FOR ITS REVIEW AND APPROVAL. PROVIDE THE BOARD OF APPEALS AND THE DEPARTMENT A COPY OF THE APPROVED PLAN. FILE FOR AN AMENDMENT TO THE SPECIAL EXCEPTION (CASE NO. S-538-B) FOR THE ADDITIONAL ACCESSORY STRUCTURES AND THE GRADE LEVEL DECK PLACED ON THE PROPERTY. OBTAIN BUILDING PERMITS FOR THESE STRUCTURES SHOULD THEY BE APPROVED BY THE BOARD.

A RE-INSPECTION AMOUNT OF \$ _____ IS REQUIRED IN ADDITION TO THE APPLICATION FEE(S).
COMPLIANCE TIME: THIRTY DAYS

YOU MAY APPEAL THIS NOTICE OF VIOLATION TO THE COUNTY BOARD OF APPEALS WITHIN 30 DAYS OF RECEIPT OF THIS NOTICE. THE BOARD OF APPEALS IS LOCATED IN THE COUNCIL OFFICE BUILDING, ROOM 217, 100 MARYLAND AVENUE, ROCKVILLE, MARYLAND 20850, (301) 217-5800.

REMARKS: FAILURE TO COMPLY WITH THIS NOTICE WILL RESULT IN A REQUEST FOR A SHOW CAUSE HEARING BEFORE THE COUNTY BOARD OF APPEALS.

FAILURE TO COMPLY WITH THIS NOTICE WILL RESULT IN A \$ 500.00 CIVIL CITATION AND/OR A COURT ORDER TO INURE COMPLIANCE.

ISSUED BY: [Signature] DATE: 2/9/01 PHONE NO.: 301-370-3652

PRINT NAME: STAN GARTNER

RECEIVED BY: _____ DATE: _____ PHONE NO.: _____

SENT BY CERTIFIED MAIL ON: 2/9/01 LEFT AT RESIDENCE ON: _____

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Telephone
Area Code 301

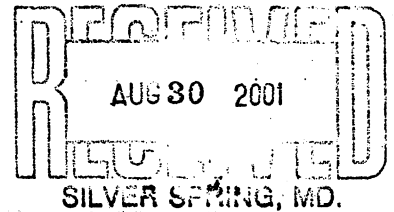
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THE MARYLAND ARCHITECTURAL
PARK AND PLANNING COMMISSION

Case No. S-538-B

PETITION OF ASPEN HILL RACQUET CLUB

NOTICE OF HEARING ON REMAND FROM CIRCUIT COURT



Case No. S-538-B is the petition of Aspen Hill Racquet Club for a modification of the special exception pursuant to Section 59-G-2.42 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1984, as amended) to permit an increase in the number of parking spaces and an increase in the number of memberships. The special exception modification was granted by the Board on the 5th day of January, 1994. The decision was appealed to the Circuit Court and remanded to the Board for further hearing.

The Mandate of the Court of Appeals dated August 19, 1994, states, in part:

"Upon review of the evidence and testimony before the Board, the memoranda submitted by the parties, and the oral arguments presented herein, this Court finds that, although the Board's decision was based upon substantial evidence contained in the record, a procedural defect occurred in the Board's proceedings, when it failed to notify the parties of the date when the record was closed and when it accepted additional evidence after the implied closing date of July 1, 1993.

"It is therefore, by the Circuit Court for Montgomery County, Maryland ...

"... ORDERED, that the matter be remanded to the Board for further hearing ..."

Notice is hereby given that a public hearing will be held by the Board of Appeals for Montgomery County, Maryland, in the Second Floor Davidson Memorial Hearing Room of the Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, on Wednesday, the 11th day of January, 1995, at 1:30 p.m., or as soon thereafter as this matter can be heard, on the above-entitled case on remand from the Circuit Court pursuant to the terms of the mandate of the Court of Special Appeals dated the 19th day of August, 1994

Only testimony that pertains to the submissions received after the close of the hearing which was held on June 9, 1993, will be received at the hearing.

The subject property is Lot 15, Homecrest Subdivision, located at 14501 Homecrest Road, Silver Spring, Maryland, in the RE-2 Zone.

Notice of hearing mailed this 14th day of October, 1994, to:

Aspen Hill Racquet Club
Robert H. Metz, Esquire

Joyce Stern, County Attorney
Karen Henry-Federman,
Assistant County Attorney
Denis Canavan, M-NCPPC
Development Review Division
Director, Dept. of Environmental Protection
Chief, Construction Permits, Dept.
of Environmental Protection
Chief, Field Services,
Dept. of Environmental Protection
Director, Dept. of Transportation
State Highway Administration
Fire Marshal
Board of Education
County Health Officer
Washington Suburban Sanitary Commission
Members, County Board of Appeals
Contiguous and confronting property owners
Layhill Civic Association
Aspen Hill Civic Association
Greater Aspen Hill Community Association
Layhill Alliance

County Board of Appeals

By: Tedi S. Osias
Tedi S. Osias
Executive Secretary to the Board

BOARD OF APPEALS
for
MONTGOMERY COUNTY

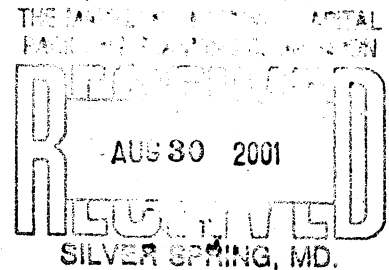
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone
Area Code 301
217-6600

Case No. S-538-B

PETITION OF ASPEN HILL RACQUET CLUB

OPINION OF THE BOARD ON REMAND FROM CIRCUIT COURT
(Resolution adopted February 28, 1995)
(Effective date of Resolution: March 14, 1995)



On January 11, 1995, the Board heard further testimony pursuant to the Court's remand in Kauffunger et al, Civil Case No. 116122. The Court found that the "Board's decision was based upon substantial evidence contained in the record", but remanded the case to us because the Board "failed to notify the parties of the date when the record was closed and when it accepted additional evidence after the implied closing date of July 1, 1993". ✓

Our notice of a further hearing specifically limited the testimony to be received to that which "pertains to submissions received after the close of the hearing which was held on June 9, 1993".

The subject property is Lot 15, Homecrest Subdivision, located at 14501 Homecrest Road, Silver Spring, Maryland in the RE-2 Zone.

DECISION OF THE BOARD: Previous Opinion, dated
January 5, 1994, AFFIRMED.

Robert H. Metz, Esq., appeared on behalf of the Aspen Hill Racquet Club, applicant. Mr. Richard Kauffunger appeared pro se and for other opposition parties.

At the further hearing the Board authorized Mr. Kauffunger to submit comments on the material which the applicant had filed following the deadline set out in the Board's hearing order (June 9, 1993) and the record was officially closed subject to that submission. Mr. Kauffunger filed timely comments.

This is our decision upon the consideration of Mr. Kauffunger's submission and the matters of record, including our prior resolution of January 5, 1994.

While our prior resolution speaks for itself, a brief summary will aid in the consideration of the action which we are taking. In that resolution we revoked the membership limitation contained in our resolution of July 16, 1983, which limited the club's membership to 2500. Having been informed by the club that it had construed the term "membership" to mean "unit" which can be composed of one or more individuals, and that generates a potential population of 12,500, we denied the requested modification because we felt that even at the present authorized level such an arrangement was unacceptable. We stated that "our concern with traffic safety and congestion will simply not permit such open ended modification". (Opinion p.5)

We specifically discounted the traffic projections of Mr. Papazian, the applicant's traffic expert, and the Planning Staff because "they may not have been aware that a 'membership' may equal more than one person".

In condition No. 6 we changed the authorized level of the club as follows:

"The membership of the club is limited to 5,000 individuals". The club was free to designate the kind of membership it would market (individual, family, corporate) as long as the number of persons produced by these memberships did not exceed 5,000 individuals. Having so limited the population of the club we permitted internal changes as long as these did not produce noise which could be heard outside the premises.

In our prior decision we specifically noted that in 1977 we had indicated that the applicant was proposing "memberships available ... for single adults, families and youngsters under the age of 18". Thus, the Board was then aware of the fact that more than one person could be included in a "membership".

It is against the background of our 1994 decision that we consider Mr. Kauffunger's comments.

1. Mr. Kauffunger correctly interprets the letter of August 5, 1993, from counsel for the Club to the effect that the Club's 2,434 "memberships" produced 4,252 persons. In fact, it was this very disclosure that prompted us to scrap the "membership" limitation and to substitute a "people" limitation.

Given this fact, we specifically minimized the importance of the traffic surveys because these may have been analyzed under the misapprehension that one "membership" equals one "individual".

By limiting the memberships to 5,000 individuals we reduced the present potential by 60% (7,500:12,500).

2. Mr. Kauffunger correctly points out that by changing the configuration of the interior, the Club can manipulate the number of people using its facilities. We have, however, limited the total number of people who can belong to the Club, and it is beyond our expertise to control the kind and number of machines (treadmills, bicycles, etc.) or courts (racquetball, tennis, etc.) which the Club can maintain.

To have the Club seek our consent every time it wished to make changes of the kind suggested by Mr. Kauffunger would impose needless burdens on the Club and us. We recognize, however, Mr. Kauffunger's position that a carte blanche might enable the Club to drastically increase the contemporaneous use of the property by eliminating area-intensive activities e.g. tennis and thus increase the traffic impact. We will, therefore, as a matter of precaution modify condition No. 5.

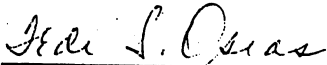
Under these circumstances, having considered Mr. Kauffunger's letter of February 3, 1995, the Board AFFIRMS its resolution of January 5, 1994. It also modifies condition No. 5 to read:

"The Club may make changes in the internally located athletic equipment from time to time, so long as the new equipment does not produce noise which can be heard outside the premises, and does not adversely impact the peak-hour traffic in the area. (Underlined material added.)

BE IT RESOLVED that, except as modified herein, all terms and conditions of the original special exception granted the 23rd day of March, 1977, and all modifications thereto, shall remain in full force and effect.

The foregoing Resolution was proposed by William S. Green and concurred in by Judith B. Heimann, Chairman, Helen R. Strang, K. Lindsay Raufaste. Allison Bryant did not participate in the foregoing Resolution.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland,
this 14th day of March, 1995.



Tedi S. Osias
Executive Secretary to the Board

NOTE: Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedures.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

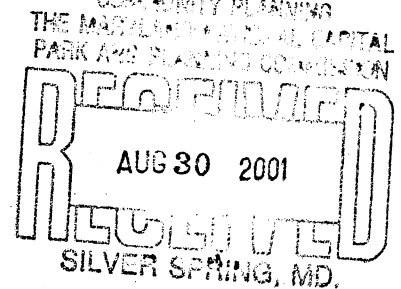
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone
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Case No. S-538-B

PETITION OF ASPEN HILL RACQUET CLUB
(Hearing held June 9, 1993)

OPINION OF THE BOARD
(Effective date of Opinion, January 5, 1994)



The applicant, Aspen Hill Racquet Club, has operated at 14501 Homecrest Road, Silver Spring, Maryland, for a number of years (Lot 15, Homecrest Subdivision in the RE-2 Zone). It will do very little to recite the history of the Club under the various modifications which ensued over the course of time, except as may be relevant to our discussion of the case.

The Club has requested the following changes from the present limitations of use imposed by previous decisions of the Board.

1. Increase membership from 2500 to 4000. To accommodate this increased membership the Club requested permission to construct 75 new parking spaces on the south side of the Club building.
2. Change the opening hour from 7 a.m. to 6 a.m. for all of its facilities.
3. Change existing conditions to permit public matches and tournaments.
4. Permit the change of internally located equipment to meet varying and changing needs of the membership.

The Technical Staff of the Planning Commission recommended approval of the requested changes, with conditions (Exhibit No. 11).

The Board held a hearing on June 9, 1993, at which the applicant was represented by Robert H. Metz, Esq., who presented witnesses. A number of citizens also appeared and the pertinent testimony of the witnesses will be discussed below.

Following the conclusion of the hearing, at the direction of the Board, the applicant submitted extensive information dealing with its compliance - or lack thereof - with the presently outstanding conditions and representations of record.

The Testimony

Timothy Rhode, the Club's General Manager, testified about the activities of the Club. He spoke in detail about the Club's cooperation with community organizations. Without reciting the uncontradicted details, the Board
finds

that the Club's record in this respect has been commendable. He indicated that there has been an increase in demand for membership and that the existing facility could easily accommodate an increase of up to 4,000 members.

He testified that there is a need for increased parking in order to accommodate the membership. The Club maintains several classes of membership - individual, corporate, family, etc.. The membership is drawn from a 3-5 mile radius with the largest concentration being in the 20906 zip code. He testified that the Club has had a number of events which were open to non-members.

Mr. Rhode testified that the use of the facilities fluctuates with the time of day. During a typical weekday the Club is used by 400 to 1100 persons, with Saturday morning being the most popular time. The morning peak use is between 6:30 a.m. and 8:30 a.m. and then it drops off. While picking up at midday, the peak usage in the afternoon is between 4 p.m. and 8:30-9:00 p.m.

The Board heard extensive testimony regarding traffic. Edward Papazian, the Club's expert witness, submitted a report and testified in person. This report (Exhibit 6) sets out the methodology on which it is based, provides lane turning calculations, results of a member survey and concludes that the requested membership increase "will have no adverse impact on the area road system". We note that the witnesses' entire conclusions are based on the day's survey, February 2, 1993, a Tuesday. The witness states that because the date falls within two months of the New Year/Christmas holidays "people desire to lose weight after overeating and attempt to adhere to New Year's resolutions related to exercise. In addition, the weather during this season prevents most outdoor exercise activity." Driveway counts were taken between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m., and a patron survey was made at the same time. He estimated that the expanded membership would generate 27 additional morning peak trips and 55 additional evening peak trips.

There are now 250 parking spaces available, and the additional spaces proposed herein will accommodate the increased membership, according to the witness.

Vera Torrance, the principal of the Strathmore Elementary School, testified that the Club has an effective community outreach program and that the Club's staff works with the children in developing physical fitness skills.

Several individuals, including the founder of the Achilles Track Club, testified as to the community contributions by the club.

In response to a request from the Board, the applicant submitted an analysis of the conditions imposed by the Board in the various modifications of the original special exception together with a showing of the degree of compliance with these conditions. A copy of the document was served on the

The opposition testimony centered around traffic and overall impact of the increased membership.

Mr. Richard Kauffenger, representing the Layhill Alliance testified that the increase in membership will substantially impair the character of the neighborhood. He was particularly concerned with the impact of the proposal upon traffic in the area.

He specifically entered into the record the proceedings dealing with the rezoning of property lying some 500 feet from the Club. In that case, G-689, both the Hearing Examiner and the Council concluded that denial was warranted because of severe traffic congestion in the area. The zoning proposal involved the increase in density resulting in but 7 additional morning peak hour trips and 9 evening peak hour trips (Ex. 17, P.42). Nevertheless, the Council denied the application because of traffic congestion. The modification proposed in this case far exceeds those numbers. (The applicant's own figures indicate an increase of 57 trips in the morning peak hour and 130 in the p.m. peak hour (EX. 6, p.11). Thus, Mr. Kauffenger reasoned, the requested increase should also be denied.

Adjoining landowners, Mr. Arnold Gebhart and Mr. Robert L. Quinchett, testified that increased membership will generate additional traffic and noise, thus resulting in an adverse impact upon their properties.

DISCUSSION BY THE BOARD

1. Membership

The breakdown submitted by the applicant indicates that the present 2,434 membership has produced 4,252 people entitled to use the Club's facilities, or 1.75 persons per membership. Using the same ratio, 4,000 memberships would produce a total participation of 6,987 individuals. Moreover, 245 family memberships produce 1,245 persons or 5 persons per membership.

Our decision to change the "ceiling" of the Club from the number of "members" to the number of persons is prompted by the disclosures in this hearing that different classes of members produce a different number of persons using the Club's facilities, ranging from one person per "individual" membership to five persons per "family" membership. While it is unlikely that a "worst case scenario" would result in 4,000 "family memberships" and 10,000 persons using the facilities, nevertheless a ceiling based on the undefined term "member" can result in a varying number of persons, thus making it difficult to ascertain and limit community impact.

In discussing traffic impact we notice the report from the Planning Staff which, after analyzing the peak hour figures at the intersection of Connecticut Avenue and Bel Pre Road and Bel Pre Road and Homecrest Road concluded that "the proposed modification is not expected to have an adverse impact on nearby intersections if the membership is limited to 4,000. In addressing that evaluation it must be remembered that the Planning Staff may

not have been aware, as we are, that a "membership" may equal more than one person and therefore proceeded on the assumption that the increase will involve only 1,500 individuals.

While both the applicant's witness, Mr. Papazian, and Planning Staff (perhaps without full knowledge of the facts) came to the conclusion that a 4,000 membership can be accommodated within the traffic envelope we cannot overlook the opposition's evidence - as embodied in the documents relating to zoning application G-689 - of severe traffic congestion in the area. While the facts in that case are a year and a half old (Ex. 17, p.4), they nevertheless must be considered in the absence of any evidence that there has been a change, particularly in view of the fact that Mr. Papazian was also the expert in the zoning proceeding and would have been aware of any changes that have taken place since that time. We are, therefore, reluctant to take the optimistic projections at their face value and grant the full request, particularly in its undefined form of "memberships". Our concern with traffic safety and congestion will simply not permit such open-ended modification.

In addition to traffic we must also consider the sheer impact of additional thousands of people descending upon the premises. No matter how well intentioned and circumspect, large numbers of people produce noise, be it from conversation or closing automobile doors. We are aware of the concerns expressed by the neighbors and do not wish to aggravate the impact upon them.

In establishing the 5,000 person limit we recognize that we are increasing the number of persons who would be using the Club by 17.6%. In reality, however, establishing this 5,000 person limit establishes a decrease in the upper limit to which the Club can expand, since under the present "membership" limitation the Club can easily exceed the 5,000 person limit by merely changing the "mix" of memberships (one "family membership" equals five persons under the present method of computation).

We specifically note that the 1977 resolution indicated that the applicant had proposed that "memberships in the Club will not exceed 1,800, with memberships available on an annual or seasonal basis for single adults, families and youngsters under the age of 18. . . ". Although no "corporate" memberships are mentioned, the total number of persons produced by such memberships (29) is insignificant.

We conclude that the measure of size by "membership" is unreliable and unwieldy since an "individual" membership produces 1 person, while a "family" membership produces 5 persons. Thus, 2,500 "family" memberships could produce as many as 12,500 persons and would be within the present permitted maximum. We are, therefore, restructuring the permitted measure of composition of the Club from "membership" to "person". This will permit us to limit any adverse impact of the operation on the neighbors and reduce any

potential traffic problems which would result if 12,500 individuals were permitted to participate. This is particularly true in the case of "family" memberships which could very well involve 5 drivers - 2 parents and 3 teen-age children.

Since under the present method of calculation the Club still has room to grow, we shall permit a total participation of 5,000 persons. While this number slightly exceeds the theoretical maximum permitted under the present calculation it permits the Club to arrange its membership structure against a rounded and definite number without any significant increase in traffic utilization or neighborhood impact. To that extent the requested increase of membership from 2,500 to 4,000 is DENIED.

2. Hours of Operation

The applicant has requested an overall opening hour of 6 a.m. While it may be agreed that such an increase spreads out the traffic impact since members will travel during the "non-rush" hour we are nonetheless concerned about the impact upon the neighbors of outdoor activities at such an early hour. We shall therefore permit indoor activities to begin at 6 a.m. while retaining the present limit upon outdoor activities.

3. Use by non-members

It is undisputed that the Club's facilities have been used by non-members, in spite of the specific language in various resolutions by this Board that the use of the Club facilities is for members only.

While retaining this limitation and reimposing it lest there be any misunderstanding, we cannot help but recognize the community benefits which have resulted from the Club's cooperation with such organizations as the Achilles Track Club and several schools. In fact, our slight increase in the potential membership of the Club is designed to encourage this kind of community activity. We shall, therefore, add the following language to the membership limitation: "the Club may make its athletic facilities available to members of non-profit community groups at times other than rush hours (7 a.m. - 9:30 a.m.; 4 p.m. - 6:30 p.m.) on the condition that the Club not receive any remuneration for this service".

We similarly note that the Club has hosted prom-parties attended by as many as 300 non-members. We realize that there is a community benefit in having prom-parties in supervised surroundings, and the Club's facilities are suitable for such activity. We shall, therefore, include the following condition:

"the Club may hold prom parties (and overnight "lock-ups") at a frequency of no more than 6 per calendar year. These parties may be open to non-members. The Club's manager, or a specially designated adult representative, shall be present on the premises during the entire duration of the function to supervise the conduct of the participants and the availability of an adequate number of adults. No alcoholic beverages shall be served or consumed."

4. Exhibitions and Tournaments

It is undenied that the Club has on occasions violated the "no exhibitions/no tournaments" condition, particularly in tennis. While several activities involved a minimal number of non-club participants, the Men's MATA Championship and the USTA Adult Play program involved 100 non-members each. While the former activity was confined to the month of June, the latter appears to be a summer-long function.

We neither sanction nor condone such violations of our conditions. We expect special exception holders to observe diligently the conditions imposed upon these special exceptions and to have mechanisms in place for the monitoring of compliance.

We find, however, that occasional exhibitions and matches, under strict conditions, are not likely to have any adverse effect on the area, particularly in view of the fact that our hearings have not disclosed any adverse comments regarding this phase of Club activity. We shall, therefore, amend the condition to permit a limited number of exhibition matches as set out in the condition section of this resolution.

5. Ancillary Matters

The Club has requested authority to make various internal equipment changes. We recognize that changing needs and client demands call for new or different equipment. Thus, the Club may make internal equipment additions/changes, as long as these do not result in changing the outside appearance or increasing the noise.

An examination of the certificate of Use and Occupancy attached to the club's response dated July 1, 1993, indicates that the certificate is dated May 21, 1981, and references the conditions of Case S-538-A. At that time the Club's membership was limited to 1,800 members, the current numbers of 2,500 having been authorized in 1983.

We shall, therefore, modify the existing special exception as follows:

1. Permission is granted to increase the parking lot up to an additional 75 parking spaces on the south side of the building at the east end of the existing parking lot. Because we are not approving the increase in membership as requested in the underlying application, the applicant may add only sufficient parking spaces to accommodate the newly authorized composition. A landscape/lighting/parking plan shall be submitted to the Technical Staff at M-NCPPC for its review and approval. One copy of the approved plan must be submitted to the Board for its records. A second copy must be submitted to DEP. All plant material must be maintained and replaced as necessary. Petitioner must also obtain approval of a grading and stormwater management plan from DEP.

2. The hours of operation of the facility shall be:

Indoor activities, 6 a.m. to 12:30 a.m.

Outdoor activities, 7 a.m. to dark

3. Only members shall be entitled to use the Club's facilities with these exceptions:

a. guests of members accompanied by members,

b. the Club may make its facilities available to members of non-profit community groups at times outside rush hours (7 a.m. - 9:30 a.m.; 4 p.m. - 6:30 p.m.) on the condition that the Club not receive any remuneration for this service,

c. the Club may hold prom parties (and overnight "lock-ups") at a frequency of no more than 6 per calendar year. These parties may be open to non-members. The Club's manager, or a specially designated adult representative shall be present on the premises during the entire duration of the function to supervise the conduct of the participants. No alcoholic beverages shall be served or consumed.

4. There shall be no public exhibit matches or tournaments on the premises, except that the Club may permit the holding of no more than two tournaments per year at which the non-member participation shall not exceed 100 persons per event.

5. The Club may make changes in the internally located athletic equipment from time to time, so long as the new equipment does not produce noise which can be heard outside the premises.

6. The membership limitation contained in the modification dated July 6, 1983, is hereby revoked, and the following limitation is substituted:


The membership of the Club is limited to 5,000 individuals. The Club may designate the kind of membership (e.g. individual, family, corporate, etc.) as long as the total number of individuals produced by these memberships does not exceed the numerical limitation set forth.

The Board adopted the following Resolution:

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

The foregoing Resolution was proposed by William Green and concurred in by Helen Strang, Howard Jenkins, Jr. and Judith B. Heimann, Chairman. K. Lindsay Raufaste was necessarily absent and did not participate in the foregoing Resolution.

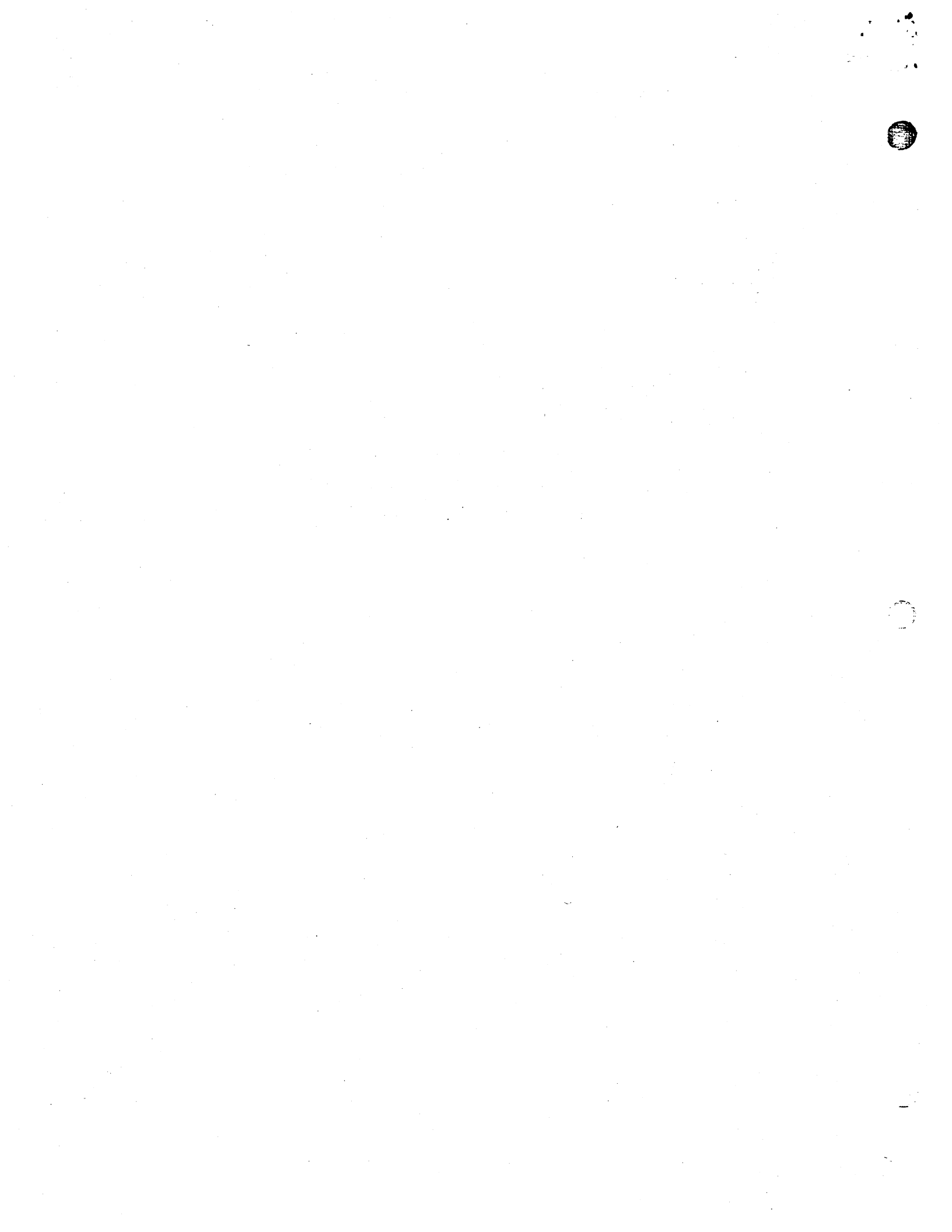
I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 5th day of January, 1994.


Irene H. Gurman
Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the
twenty-four-months' period within which the right granted by
the Board must be exercised.

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

Any decision by the County Board of Appeals may, within (30) days after the
decision is rendered, be appealed by any person aggrieved by the decision of
the Board and a party to the proceeding before it, to the Circuit Court for
Montgomery County in accordance with the Maryland Rules of Procedure.



BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Telephone
Area Code 301
217-6600

Case No. S-538-B

PETITION OF ASPEN HILL RACQUET CLUB

NOTICE OF APPEAL

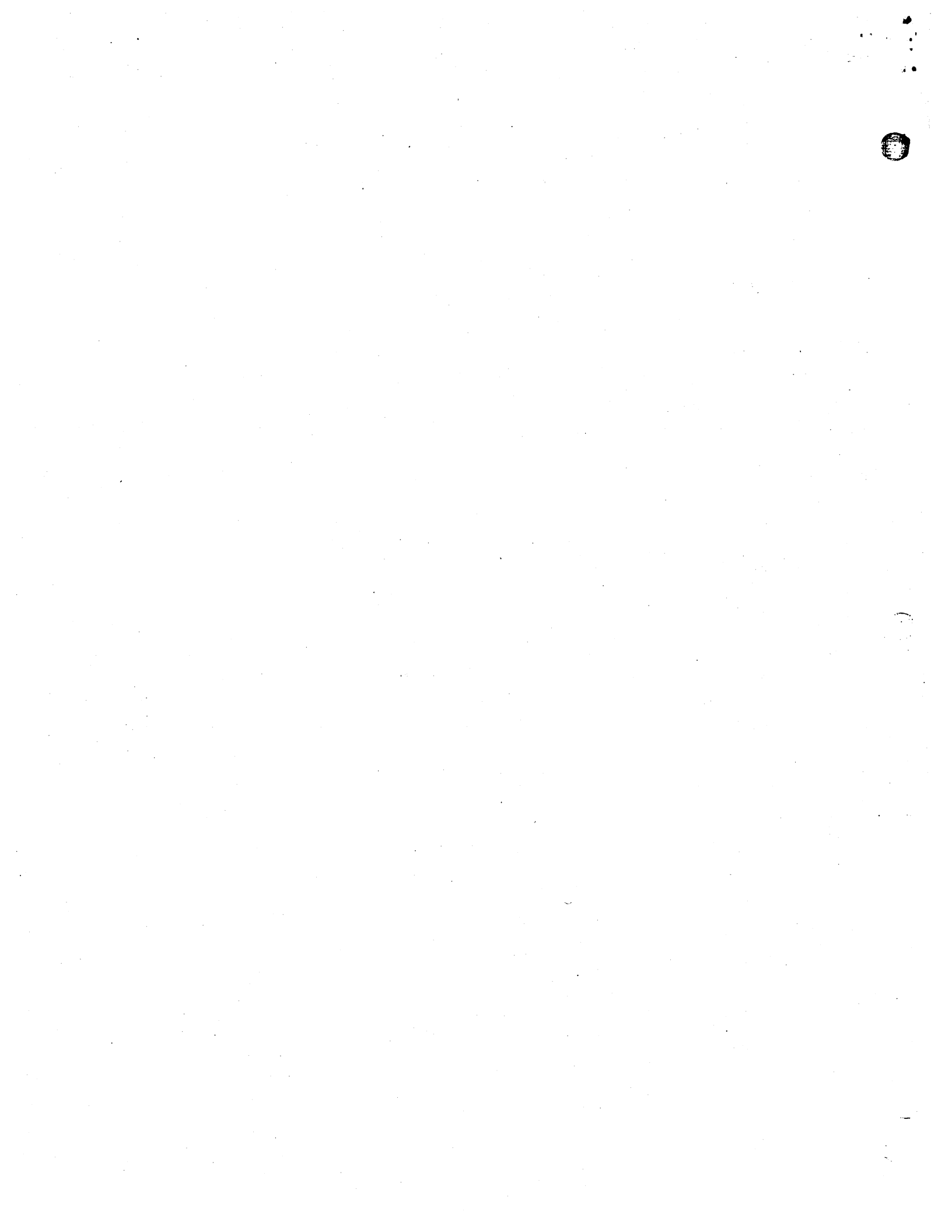
Notice is hereby given to parties to the above-entitled proceeding that the decision of the Board has been appealed to the Circuit Court for Montgomery County, Maryland; the appeal has been designated in that Court as Civil No. 116122.

The subject property is Lot 15, Homecrest Subdivision, located at 14501 Homecrest Road, Silver Spring, Maryland, in the RE-2 Zone.

Notices mailed this 10th day of February, 1994, to all parties entitled to notice.

County Board of Appeals

By: Irene H. Gurman
Irene H. Gurman
Clerk to the Board

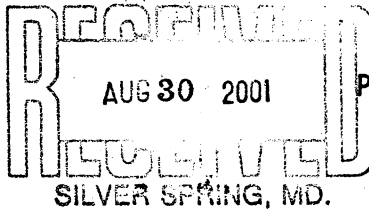


BOARD OF APPEALS
for
MONTGOMERY COUNTY

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COMMUNITY PLANNING
THE MARYLAND NATURAL AND HISTORICAL
PARKS AND PLANNING COMMISSION



Case No. S-538-A

PETITION OF ASPEN HILL RACQUET CLUB
By: Timothy Rhode
(Hearing held January 31, 1990)

JUL 1990

OPINION OF THE BOARD

The petitioner, Aspen Hill Racquet Club, has requested a modification to its special exception pursuant to Section 59-G-2.42 of the Zoning Ordinance to modify the pool structure approved by the Board in October, 1988, which has not yet been constructed.

The subject property is located at 14501 Homecrest Road, Silver Spring, Maryland, in the RE-2 Zone.

Decision of the Board:

Special exception modification
granted subject to conditions
enumerated herein.

The petitioner was represented by Kristine Trevino, who outlined petitioner's request and offered testimony from witnesses Timothy Rhode, General Manager, Mike Rosinsky and Martin Thomas, who explained the operation of the club and the proposed pool usage.

The club was established on the subject property following the approval of S-538 by the Board of Appeals in 1977. In the intervening years the special exception has been modified several times. The last modification, approved by the Board in October, 1988, permitted 115 additional parking spaces; a swimming pool; relocation of two existing platform tennis courts; and a change in signage. The petitioner now proposes to modify the design of the approved swimming pool.

The subject property of 15.97 acres is located on the east side of Homecrest Road, 800 feet north of the intersection with Bel Pre Road. The property is improved by a large clubhouse complex, 13 outdoor tennis courts (four enclosed by a bubble for winter play), three platform tennis courts, and 135 parking spaces. The additional parking approved in the last modification has not been constructed yet. Other improvements include four stormwater management facilities. Mature evergreen and deciduous trees provide adequate screening from adjoining properties. The surrounding neighborhood is primarily residential in character with single-family houses, an elderly housing facility, and the Argyle Country Club bounding and confronting the subject property on all sides. The country club, to the east, is the closest property to the swimming pool site.

Petitioner proposes the construction of a smaller indoor pool to be permanently located in a smaller, more rigid structure with a smaller outdoor pool to be added in a later phase. The entire facility will be in the same location as the currently approved pool complex and the proposed indoor pool will occupy less area than the originally-proposed indoor/outdoor bubble-enclosed pool complex. The two pools will be used in the manner set forth in the prior approval, i.e., primarily for lap swimming and aqua aerobics.

The Technical Staff of M-NCPPC, upon review of the petition and a site visit, found that the proposed modification would be acceptable and would not substantially change the nature, character or intensity of the original grant. They further found that the redesigned pool complex meets all setback requirements for the zone and that no significant increase in trips will be generated from the subject property. The staff noted, however, that the site plan submitted for review does not reflect the location of two platform tennis courts shown on the approved landscape plan and that a revised site plan reflecting relocation of the platform tennis courts and the pool complex should be submitted for Technical Staff approval (Exhibit No. 5).

No opposition to the requested modification was entered in the record or presented at the hearing.

FINDINGS OF THE BOARD

Based on the foregoing and the petitioner's statements that there would be no increase in club membership and that only existing members may use the swimming pools, the Board finds that the proposed modification will not change the nature, character, or intensity of use of the original special exception grant.

Therefore, the requested modification to the special exception to permit modification of the pool structure is granted, to petitioner only, with the following conditions:

1. Petitioner is bound by all testimony and exhibits in the record.
2. Construction of the pool complex shall be according to plans entered into the record as Exhibit No. 8.
3. Petitioner shall submit a revised site plan to the Technical Staff for review and approval showing the location of both the swimming pools and the relocated platform tennis courts.

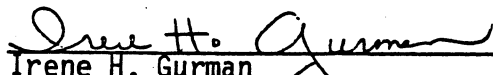
All terms and conditions of the original special exception and any modifications thereto shall remain in full force and effect.

The Board adopted the following Resolution:

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

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

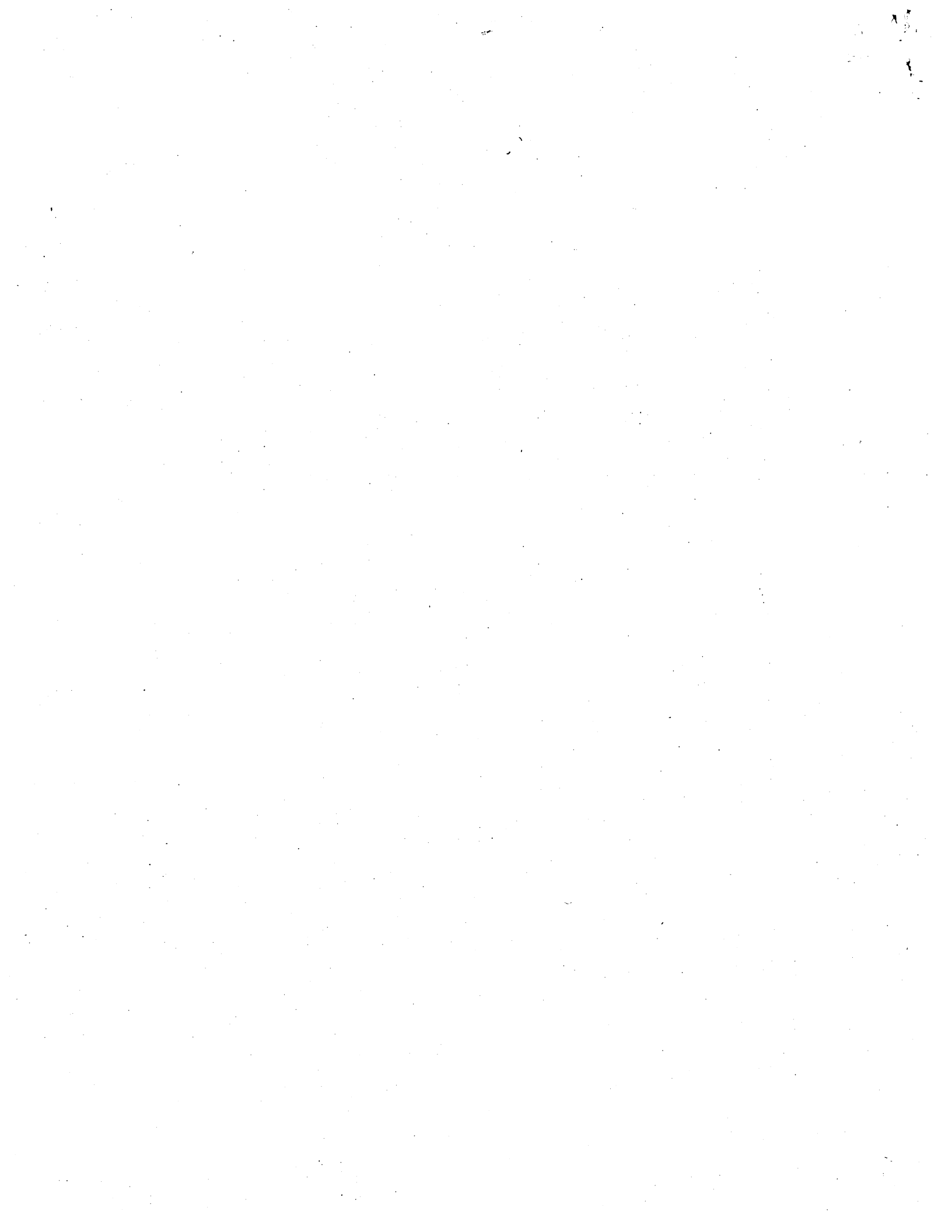
I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 27th day of February, 1990.


Irene H. Gurman
Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-months' period within which the right granted by the Board must be exercised.

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

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.



COUNTY BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
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Rockville, Maryland 20850

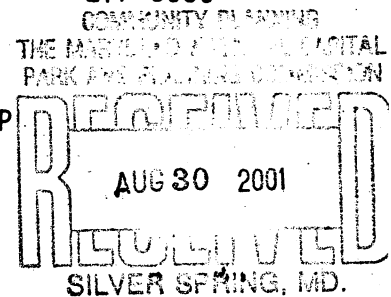
Telephone
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Case No. S-538-A

PETITION OF ASPEN HILL RACQUET CLUB LIMITED PARTNERSHIP
(By: Melvin Lenkin)

(Hearing held October 12, 1988)

OPINION OF THE BOARD



Case No. S-538-A is the petition of Aspen Hill Racquet Club Limited Partnership for a special exception pursuant to Section 59-G-2.49 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1984, as amended) to permit certain modifications to the existing special exception for the Aspen Hill Racquet Club Limited Partnership. The requested modifications are: addition of 115 parking spaces; addition of a swimming pool; relocation of two existing platform tennis courts; change in signage.

The subject property is Lot 15, Homecrest Subdivision, located at 14501 Homecrest Road, Silver Spring, Maryland in the RE-2 Zone.

Decision of the Board: Special Exception modifications granted to petitioners only, subject to conditions enumerated herein.

The petitioner was represented by attorneys Kristine M. Trevino and James W. Tavel.

Petitioner's Proposal

The original special exception, S-538, was granted on March 23, 1977 and was modified several times since then to allow for expansion and modification of facilities in order to accommodate increases in membership. The petitioner now proposes additional modifications - addition of 115 parking spaces, addition of a swimming pool, relocation of two existing platform tennis courts, and change in signage - to accommodate changing habits and needs of the existing membership.

The subject property of 15.97 acres is located on the east side of Homecrest Road, 800 feet north of the intersection with Bel Pre Road. The property is improved with a clubhouse complex, thirteen outdoor tennis courts (four enclosed by a bubble for winter play), three outdoor platform tennis courts, and 135 parking spaces. Inside the 137 x 467 foot clubhouse there are tennis and racquetball courts as well as an exercise facility, locker rooms, lounges, snack bar, pro shop, and storage rooms. Also on the property is a one-story caretaker's residence, a small shed used for storage and maintenance, and a stormwater management facility. Mature evergreen and deciduous trees provide adequate screening of the property from adjoining properties. Abutting on the north is a 4.64 acre parcel with two

single-family residences (Preliminary Plan No. 1-88129 was approved August 4, 1988 for this parcel for the development of eight residential lots); to the east is the Argyle Country Club; and to the south are several large lots with single-family residences fronting on Bel Pre Road. Confronting to the west across Homecrest Road is an elderly housing facility and a 4.4 acre vacant lot. With the exception of this elderly-housing abutting on the parcel bounding to the north of the subject property, both zoned R-200, the land surrounding the subject property is zoned RE-2.

The following is extracted from evidence and exhibits in the record and oral testimony at the hearing:

Additional Parking

Club members' transportation habits and use of the Club have changed over the past ten years, making only limited parking available during times of peak use. In order to improve the parking situation at the Club, an additional 115 spaces are proposed for a total of 250 parking spaces. The Club has submitted an updated traffic and parking study which shows that during peak hours the 115 additional parking spaces will be more than sufficient to accommodate the Club's present and future needs. No increase in the Club's membership is proposed. The additional parking is designed to improve the current parking lot and service at the Club and to ensure that the Club's use does not encroach on any adjoining property. As shown on the revised site plan (Exhibit No. 9), the additional parking will be located in areas of the existing paved driveways and will not encroach upon the thick tree buffer which surrounds the property.

New Swimming Pool and Relocation of Existing Platform Tennis Courts

The Club proposes to add an exercise pool and surrounding deck on the east side of the main building in the current location of three outdoor platform tennis courts. The proposed exercise pool will be designed to accommodate a maximum of sixty persons and will be used primarily for lap swimming and aqua aerobics. The pool will be for the exclusive use of existing club members only and would be included in existing membership privileges. No separate pool memberships will be offered. The pool would be surrounded by a wood and concrete deck and would be enclosed in a bubble during the winter months in the same way as the outdoor tennis courts. The proposed location of the swimming pool would require relocating two existing platform tennis courts and eliminating one existing court (See revised site plan, Exhibit No. 9). The two courts to be relocated will be moved to the east of the existing courts, well within the building restriction line and will be adequately buffered by the dense evergreens surrounding the subject property.

Changed Signage

The Club proposes to relocate and upgrade the existing locational sign. The sign will be moved closer to the south entrance of the Club. The existing sign is currently located past the north driveway. This frequently causes the south parking lot to be passed by. Relocating the sign will mean earlier recognition of the Club's location, leading people to the larger south

parking lot. The new sign is to be backed with three flagpoles supporting the American flag, the Montgomery County flag, and a flag with the Aspen Hill crest. The sign will not be internally lit but will be illuminated by subdued floodlamps after dark up to closing time.

Further testimony was given at the hearing by Timothy Rhode, General Manager of the Club, Michael Wiercinski, expert in land planning and civil engineering, and John Wright, expert in traffic engineering. The sum of the expert testimony was that the Club, with the proposed modifications, will remain in harmony with the neighborhood, particularly in view of the fact that there will be no increase in the membership. They will comply with the recommendations of Maryland-National Capital Park and Planning Commission on landscaping (see below), which should lessen the impact on the existing tree screen. The new pool will not generate new trips but will simply extend the length of visit to the Club.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION RECOMMENDATIONS

Staff found the proposal acceptable with only negligible impact on surrounding properties and recommended approval. It made certain recommendations about location of parking spots, which were incorporated in the conditions below.

Opposition

There is no evidence of opposition in the record and no one in opposition appeared at the hearing.

Findings of the Board

After careful consideration of all testimony, evidence and exhibits of record, the Board finds that the proposed modifications to the existing special exception meet all the requirements of the general and special conditions of the Zoning Ordinance.

Accordingly, the petition to permit the requested modifications to the existing special exception is granted to petitioner only, subject to the following conditions:

1. Petitioner is bound by all testimony, evidence and exhibits of record.
2. Petitioner shall submit a landscape plan to M-NCPPC for review and approval. The revised site plan (Exhibit No. 9) showing sixteen new spaces on the south parking lot shall be further revised and resubmitted to M-NCPPC to show only six new parallel parking spaces in the south lot. The other ten shall be relocated elsewhere on the site. Two copies of the approved plan shall be forwarded to the Board for its records.

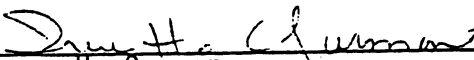
3. Petitioner shall submit plans to DEP for review and approval of existing or proposed storm water management facilities and oil/grit separation facilities, in view of changes in run-off due to added impervious pavement.

The Board adopted the following Resolution:

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

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

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 27th day of October, 1988.



Irene H. Gurman
Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-months' period within which the right granted by the Board must be exercised.

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

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

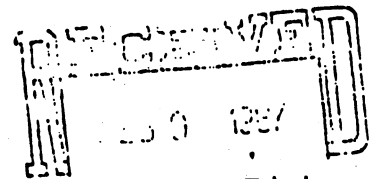
COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

STELLA B. WERNER COUNCIL OFFICE BUILDING
100 MARYLAND AVENUE
ROCKVILLE, MARYLAND 20850

Case No. S-538

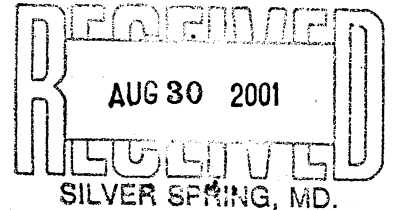
PETITION OF STANLEY A. HOFFBERGER
t/a Aspen Hill Racquet Club

RESOLUTION TO TRANSFER and MODIFY SPECIAL EXCEPTION
(Resolution adopted February 5, 1987)



Telephone
Area Code 301
279-1226

COMMUNITY PLANNING
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION



The Board has received a letter dated January 9, 1987, from David J. Canale, attorney for the petitioner, which states, in part:

"On March 23, 1977, the Board of Appeals granted Special Exception No. S-538 to Stanley Hoffberger and the Aspen Hill Racquet Club Limited Partnership ... to permit the construction and operation of a private racquet club on Lot 15 ..., Homecrest Subdivision, consisting of 15.9696 acres in the RE-2 Zone, also known as 14501 Homecrest Road, Silver Spring, Maryland...Enclosed ... is a copy of the record plat of the Subject Property.

"On June 18, 1980, the Board amended S-538 to permit the conversion of indoor tennis facilities to six indoor racquetball courts, to convert two existing outdoor tennis practice lanes to one tennis court and to add two new outdoor tennis courts. ...

"The Club now proposes two minor modifications to S-538. We ... request the Board to consider the proposed modifications under ... Section 59-G-1.3(c) of the Montgomery County Zoning Ordinance.

"The first modification is to delete Mr. Stanley Hoffberger as the representative special exception holder for Aspen Hill Racquet Club Limited Partnership and substitute Mr. Melvin Lenkin. Mr. Hoffberger is now located in Houston, Texas and is sometimes difficult to contact. Mr. Lenkin is located in Bethesda and follows the Club's activities more closely.

"The second modification is to enclose four (4) existing outdoor tennis courts on a seasonal basis. The Club currently operates thirteen (13) outdoor and six (6) indoor tennis courts. During the cold weather season, however, the outdoor courts have limited or no use for tennis playing. An overwhelming majority of members have requested the Club to make more court time available during the winter months. The only practical means to achieve additional court time would be to enclose some of the outdoor courts during the cold weather months.

"The proposed modification is the seasonal use of a thirty-six (36) feet high tennis bubble to enclose four (4) existing tennis courts centrally located on the Subject Property. The subject tennis courts are adjacent to

the forty (40) feet high existing structure used as the clubhouse. The bubble would immediately adjoin the existing clubhouse enabling members to walk through the clubhouse into the enclosed tennis area. ...Exhibit 'C' is a copy of the Site Plan ...with the subject tennis courts outlined in yellow.

"The Club proposes to erect the bubble on September 15 and dismantle it by April 15 on an annual basis. The newly enclosed tennis courts are proposed to be available for use during the same times the indoor facilities are available with the goal of alleviating the taxing demand presently placed on the six (6) indoor courts. No increase in membership or change in hours of use is proposed.

"The bubble would not extend higher than the clubhouse and will be further screened by the dense evergreens surrounding the Subject Property. ...the bubble will not impair the adjoining neighbors' vistas. ...we contacted a majority of adjoining property owners and explained the proposed bubble modification. ...the adjoining property owners had no objections to our proposal. Enclosed as Exhibit 'D' please find letters from these adjoining owners consenting to the modification.

"The proposed modifications will not change the nature, character or intensity of the use, nor would they substantially change the Club's effect on traffic or on the immediate neighborhood. ...when the bubble is in use, there will still be fewer tennis courts available to members than during the summer months. Thus, traffic during the bubble season will still be less than during the summer.

"We respectfully request the Board to consider the proposed minor modifications pursuant to Section 59-G-1.3(c) of the Zoning Ordinance. ...Exhibit 'E' is a list of adjoining and confronting property owners. ..."

Based on the foregoing information, the Board is of the opinion that the petitioner's request represents a minor modification to the special exception; that the change of owners of the special exception and the requested minor modification to the special exception can be granted without changing the nature, character or intensity of the use of the property, nor changing the effect on traffic or on the immediate neighborhood. Therefore, in accordance with the provisions of Section 59-G-1.3(c) (1) of the Zoning Ordinance,

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that Case No. S-538 shall be re-opened to receive Mr. Canale's letter as Exhibit No. 67; Record Plat, Exhibit No. 67(a); Board's Resolutions, Exhibit No. 67(b); Site Plan, Exhibit No. 67(c); letters from adjoining owners consenting to the modification, Exhibit No. 67(d); and list of adjoining/confronting property owners, Exhibit No. 67(e); and

Case No. S-538
Petition of Stanley A. Hoffberger
Page 3

BE IT FURTHER RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the request to substitute Mr. Melvin Lenkin as the special exception holder in the above-referenced case shall be and is hereby granted; and.

BE IT FURTHER RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that petitioner may enclose four (4) existing outdoor tennis courts with a bubble as outlined in Mr. Canale's letter (Exhibit No. 67) and in accordance with the Site Plan (Exhibit No. 67(c)).

All other terms and conditions of the special exception, except as modified, shall remain in full force and effect.

The foregoing Resolution was proposed by Joseph E. O'Brien, Jr., Vice Chairman, and concurred in by Thomas S. Israel, Howard Jenkins, Jr., and Max H. Novinsky. The Board members aforementioned constitute the current members of the Board.

Entered in the Minute Book of
the County Board of Appeals for
Montgomery County, Maryland,
this 6th day of February, 1987.


Irene H. Guman
Clerk to the Board

NOTE:

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

...



COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

STELLA B. WERNER COUNCIL OFFICE BUILDING
100 MARYLAND AVENUE
ROCKVILLE, MARYLAND 20850

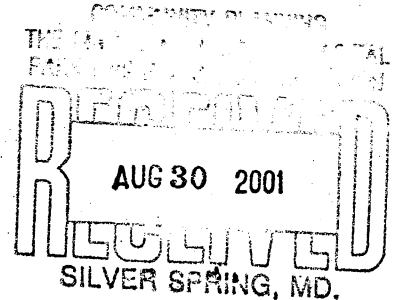
Telephone
Area Code 301
279-1226

Case No. S-373

PETITION OF STANLEY A. HOFFBERGER
and the
ASPEN HILL LIMITED PARTNERSHIP

Case No. S-538

PETITION OF STANLEY A. HOFFBERGER
t/a ASPEN HILL RACQUET CLUB



RESOLUTION OF THE BOARD TO CORRECT ERROR
(Resolution adopted June 19, 1986)

The Board is in receipt of a letter dated May 12, 1986, from David J. Canale, attorney for the petitioner, which states, in part:

"In reviewing the Board of Appeals' opinions granting the special exception for Aspen Hill Racquet Club, I found that the most recent modification to the special exception, adopted by a resolution dated June 30, 1983, has inadvertently been included in the wrong case file. The purpose of this letter is to request an administrative correction so that the latest modification is included in the proper case file.

"In Board of Appeals' Case No. S-373, by decision dated April 15, 1975, the Board granted a special exception permitting the construction and operation of the Aspen Hill Racquet Club. The S-373 Club was to be located upon property known as 14701 Homecrest Road. Prior to implementation of the special exception, the Petitioner, by Board of Appeals Case No. S-538, requested relocation of the proposed Club to 14501 Homecrest Road. By resolution dated March 23, 1977, the Board granted the Petitioner's request in S-538 to relocate the Club.

"One of the conditions of approval in S-538 provides:

"'13. Simultaneously with the issuance of the building permit for the facilities on the subject site, the special exception granted in Case No. S-373 shall be null and void.'"

"By a letter dated June 16, 1983, the Board received a request from Aspen Hill Racquet Club to modify its special exception. The letter inadvertently referred to Case No. S-373 (which is null and void) rather than S-538. The Board granted the modification to the Aspen Hill Racquet Club by resolution dated June 30, 1983; however, the resolution is currently located in the S-373 case file rather than the S-538 case file.

"We respectfully request that the Board transfer the June 30, 1983, Resolution from the S-373 case file to the S-538 case file."

Based on the foregoing information contained in Mr. Canale's letter, the Board finds that an inadvertent error has been made. Therefore,

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the Board's Resolution to Modify Special Exception entered in Case No. S-373, adopted June 30, 1983, and entered in the Minute Book of the County Board of Appeals on the 6th day of July, 1983, shall be transferred to and made a part of the record in Case No. S-538; therefore, Case No. S-538, Petition of Stanley A. Hoffberger t/a Aspen Hill Racquet Club, shall be considered modified in the same manner as was Case No. S-373. The Resolution modifying Case No. S-373, dated July 6, 1983, shall be considered Null and Void in as far as modifying Case No. S-373.

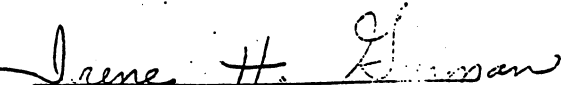
BE IT FURTHER RESOLVED that the Exhibits entered in Case No. S-373 pertaining to the modification adopted June 30, 1983, Exhibit Nos. 91, 92 and 93, shall be removed from the record of Case No. S-373 and Case No. S-538 shall be re-opened to receive the following exhibits: Letter from petitioner's attorneys dated June 16, 1983, Exhibit No. 63; Traffic Analysis dated June, 1983, Exhibit No. 63(a); and the then current list of adjoining and confronting property owners, Exhibit No. 63(b). The Resolution of the Board adopted June 30, 1983, shall be entered in Case No. S-538 as Exhibit No. 64(a).

All terms and conditions in Case No. S-538, except as modified, shall remain in full force and effect.

The subject property is Lots 6, 7 and 8, Homecrest Subdivision, located at 14501 Homecrest Road, Wheaton, Maryland, in an RE-2 Zone.

The foregoing Resolution was proposed by Joseph E. O'Brien, Jr., and concurred in by Thomas S. Israel, Howard Jenkins, Jr., and Max H. Novinsky. Doris Lipschitz, Chairman, was necessarily absent and did not participate in the foregoing Resolution.

Entered in the Minute book of
the County Board of Appeals for
Montgomery County, Maryland
this 20th day of June, 1986.


Irene H. Gunman
Clerk to the Board

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

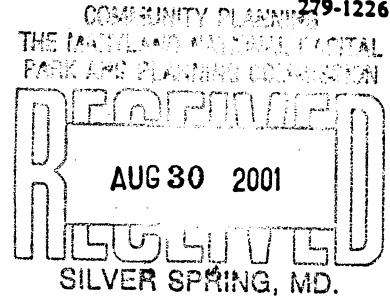
COUNTY OFFICE BUILDING
100 MARYLAND AVENUE
ROCKVILLE, MARYLAND 20850

Telephone
Area Code 301
279-1226

Case No. S-373

PETITION OF STANLEY A. HOFFBERGER
and the
ASPEN HILL LIMITED PARTNERSHIP

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution adopted June 30, 1983)



The Board has received a letter from James W. Tavel and Charles S. Rand, attorneys for the special exception holder, requesting modification of the special exception. The letter dated June 16, 1983, states, in part:

"...We are seeking the approval of what we consider to be non-substantial modification of Special Exception S-373 (the Aspen Hill Racquet Club) pursuant to the procedures of Ch. 59-G-1.3(c)(1).

"The Applicant was granted Special Exception No. S-373 to operate a private tennis club on July 8, 1976, almost seven years ago, and it has been modified occasionally since that time. The Aspen Hill Racquet Club is located at 14501 Homecrest Road, a 15.96 acre site located north of the intersection of Bel Pre Road and Layhill Road in Silver Spring.

"The club has been constructed and operates in accordance with the Special Exception as granted ... The facility contains 13 outdoor tennis courts, 8 indoor tennis courts, 3 platform tennis courts and 8 racquet-ball courts. While 10 racquet-ball courts and 15 outdoor tennis courts have been approved, only 8 and 13 respectively have actually been constructed to date. ...

"The Applicant currently operates an exercise/fitness area which was approved as part of the original application and has always been a part of the club's program. There has been an increased interest on the part of the club members in the physical fitness programs of the club and a desire that these programs be more available and be upgraded. ... Improvement of the club's program in this area has become a competitive necessity to assure vitality of the club in order to be responsive to its members and to be able to attract new members, many of whom are clearly interested in such programs. ... the club is preparing to upgrade and modernize its fitness facilities.

"The club proposes to introduce circuit weight training equipment in the physical fitness area within the existing clubhouse; some interior room modifications may be involved in order to properly accommodate the new equipment. To accommodate the program, the club also proposes to add from one to three employees, depending on the ultimate actual demand for use of the equipment. ...

"The experience gained in the club's operation over the past seven years has also led to the realization that the 1,800 membership maximum established in the

grant of the special exception in 1976 may become inadequate in the near future. The club currently has approximately 1,500 memberships. It has experienced a gradual rise in the level of memberships over the years as population in the area has increased and the club has become established in the community. ... The experience at Aspen Hill has been one of a progressive pattern of greater individual memberships rather than family memberships. This situation now causes the applicant to feel uncomfortably constrained by the membership-cap.

"The Applicant requests that the membership maximum of 1,800 be removed upon the condition that the club's current membership structure not be otherwise altered so that the club will in fact remain private. In the alternative, the Applicant requests that the membership maximum be increased to 2,500 memberships.

"... When the modification of the fitness facilities was considered, the Applicant asked the traffic engineers from the original application, Hunnicutt and Wright, to assess whether there would be any change in the traffic generation characteristics of the club as a result of that modification or from an increase in memberships. Their report accompanying this application ... states that traffic generation is dependent upon use of the available facilities, not the number of memberships, and that there will be no appreciable change in terms of traffic generation. ... (i.e.) the traffic generation characteristics of the club do not change because of the number of memberships, but only if more racquet courts or such additional facilities were to be added to the club.

...

"... the actual experience at Aspen Hill has been that only 133 peak-hour trips could be projected even when full use of all facilities (including the platform tennis courts) is assumed during peak-hours. If the platform tennis courts are excluded, only 117 trips would be projected. In reality, all the facilities are virtually never in full use at peak hours so the actual trip generation is even lower.

...

"Because the program changes and the removal of the membership-cap do not require any external physical modifications, do not have any additional traffic impact and do not change the nature and operation of the club in any way, the Applicant seeks this modification as a non-substantial amendment. ..."

Based on the foregoing request and the information contained in the letter and traffic report, the Board finds that the requested modification is such that the special exception can be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood. Therefore, pursuant to Section 59-G-1.3 (c)(1) of the Montgomery County Zoning Ordinance,

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that Case No. S-373, shall be re-opened to receive the following exhibits: Letter from the attorneys dated June 16, 1983 - Exhibit No. 91; Traffic Analysis dated June 1983 - Exhibit No. 92; and the current list of adjoining and confronting property owners - Exhibit No. 93.

BE IT FURTHER RESOLVED by the County Board of Appeals that Case No. S-373 shall be amended in the following manner:

Upgrade and modernize its fitness facilities; to add circuit weight training equipment in the physical fitness area within the existing clubhouse; add up to three employees; and increase memberships up to 2,500.

All other terms and conditions of Case No. S-373 shall remain in full force and effect.

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

Entered in the Minute Book of the County
Board of Appeals for Montgomery County
this 6th day of July, 1983.



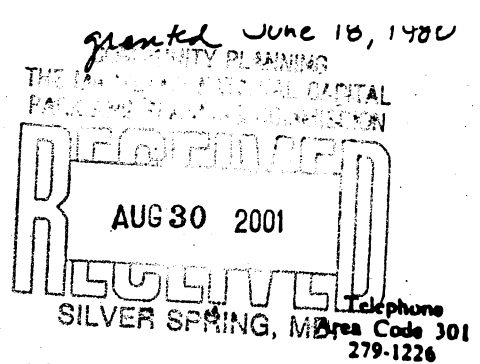
Dollie H. Kyte
Clerk to the Board

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

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING
ROCKVILLE, MARYLAND 20850

Case No. S-538-A



PETITION OF ASPEN HILL RACQUET CLUB
(Amendment hearing held June 5, 1980)

OPINION OF THE BOARD

This proceeding arises on the petition filed pursuant to Section 59-G-2.24 (59-G-2.42) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1977, as amended) requesting modification of the special exception facility to permit the conversion of indoor tennis facilities to six indoor racquetball courts, to convert two existing outdoor tennis practice lanes to one tennis court, and to add two new outdoor tennis courts. The subject property is Lots 6, 7 and 8, Homecrest Subdivision, on Homecrest Road, Silver Spring, Maryland, in an RE-2 Zone.

Decision of the Board: Requested amendments granted.

The testimony for an amendment to special exception Case No. S-538 included a site plan (Exhibit No. 10) showing three linked structures in the center of the club property, with two entrances from Homecrest Road. To the east there is one tennis and two practice courts.

Times for play are 6:00 a.m. until midnight on indoor courts, and 7:00 a.m. until dark on outdoor courts, used generally from May through October. Low-level lights illuminate three platform tennis courts which are utilized in cold weather. In effect all courts are never used at any one time.

The amendment applied for would modify indoor use by eliminating one tennis court and two practice lanes, replacing them with six racquetball courts. The outdoor modification would convert two practice courts to one tennis court, and would include the construction of two additional tennis courts at the rear southeast portion of the property, near the Argyle Country Club property (See Exhibit No. 10). No increase in membership or change in hours of use is proposed.

The survey and analysis of traffic flow based on all courts in use was entered as Exhibit No. 5. Petitioner stated that this was a most conservative estimate since this rarely occurs.

Also staggered hours were not taken into account. It was estimated that 27 to 33 additional peak hour trips would be generated by the requested facilities; these trips would not adversely affect traffic conditions in the area.

Present parking accommodates 135 vehicles. Standard per Ordinance 7.9001, 59-E-7.6 as amended, is 3.5 spaces per court for this type of facility. With the additional spaces being installed, the average will be 3.75 spaces per court. The observed use (an average of 65 cars) so far has been significantly below the standard requirement.

The perimeters of the property are almost completely screened except for the southeast corner adjacent to Argyle Country Club. The present screening is being augmented by 150 new seedlings this year, with more anticipated in program with Maryland-National Capital Park and Planning Commission.

No outside tennis court lighting exists or is planned for new courts. ✓

Applicant stated there are currently approximately 1,700 members which includes 600 spouse and children. The largest membership group is from the 20906 mail zone area in which the club is located. Winter courts are scheduled by reservations only, whereas outdoor courts are available partly (8) by reservations and partly on a first-come, first-served basis. All racquetball courts are now subscribed between 4:30 p.m. and 10:30 p.m. Club staff has received many requests for additional racquetball time; they conducted a survey which indicated demand for more racquetball courts. Racquetball is usually played by two persons.

Fred Shaffer, member of the board of directors of the Argyle Country Club, and first vice president of the Argyle Land Company (adjacent property), knows of no objections by the Land Company. However, he has been working with the applicant to correct a problem caused by an increased flow of water from the Aspen Hill club property, which did not exist prior to its installation. Increased flow, particularly with heavy rains, has caused flooding and sediment deposits on the Argyle club fairway. Sediment deposits in retaining ponds can be dredged out and the ponds possibly enlarged. The parties are working toward an acceptable solution as they have in the past.

The petitioner, Stanley Hoffberger, stated that his engineer is checking condition as a result of a request of the Soil Conservation Chief. He noted that there are on-site stormwater management facilities, including two holding ponds (one near the southeast corner and one in the east-center of property), and a dam across the north central part of the property to direct off site water coming onto the subject property into a natural swale. The dam is designed for a ten-year storm. The stream flows through the natural swale from the northeast corner of the site onto Argyle property. Mr. Hoffberger noted that authorities would not issue a grading permit to construct the two new tennis courts requested until this problem was resolved.

Maryland-National Capital Park and
Planning Commission Recommendation

The Maryland-National Capital Park and Planning Commission's technical staff recommends approval of the proposal, observing:

"The staff has no objection to the applicant's request since the modification will generate only about 33 peak-hour trips. The intersection at Homecrest Road and Bel Pre Road is currently operating at level of service "A" during the evening peak hour and will not be affected by the additional traffic."

Findings of the Board

After reviewing all testimony, evidence and exhibits of the record which are binding on the petitioner, the Board finds the proposed amendment, as conditioned herein, meets both the general requirements for the grant of a special exception as set forth in Section 59-G-1.21 and the particular requirements as set forth in Section 59-G-2.24 of the Zoning Ordinance.

Accordingly, the requested amendment to the special exception is granted, subject to the following conditions:

1. Construction shall be in accordance with the plans submitted in the record, Exhibit No. 4(b) (also Exhibit No. 10).

2. Petitioner shall obtain a use and occupancy permit from the Department of Environmental Protection prior to using the new facilities.
3. Special exception holder shall submit a detailed plan for landscaping and screening to the technical staff of the Maryland-National Capital Park and Planning Commission for review and approval. Copy of the approved plan shall be submitted to both the Board of Appeals and the Department of Environmental Protection for the record.
4. Hours of operation of the various court facilities shall be limited as follows:

Clubhouse: 7:00 a.m. to 12:30 a.m., daily.
Indoor courts: 6:00 a.m. to 12:00 midnight, daily.
Outdoor tennis courts:
 summer, 7:00 a.m. until dark
 winter, 8:00 a.m. until dark
Outdoor platform tennis courts:
 7:00 a.m. to midnight, daily.
5. No public exhibition matches or tournaments shall be held at the private club.
6. No outdoor courts other than the platform tennis courts may be illuminated for night play.
7. Total memberships shall not exceed 1800 at any one time.
8. Copy of the approved sediment control and storm water management plan shall be submitted to the Board of Appeals for the record.
9. No alcoholic beverages other than wine or beer may be served on the premises. Approval of a license to serve wine or beer is subject to action of the County Alcoholic Beverage Control Board. If such a license is approved, petitioner shall file a copy of said license in the records of the Board of Appeals and the Department of Environmental Protection, and he shall be responsible for ensuring that such beer and wine are consumed only on the club premises.

The Board adopted the following Resolution:

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

The foregoing Resolution was proposed by Mr. Wallace I. Babcock and concurred in by Mrs. Marjorie H. Sonnenfeldt, Chairman, Mrs. Shirley Lynne, Mrs. Doris Lipschitz and Mr. Joseph E. O'Brien, Jr.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 18th day of June, 1980.


Clerk to the Board

Any decision by the County Board of Appeals may, within 30 days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Note: See Section 59-A-4.53 of the Zoning Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

granted March 23, 1977

EXHIBIT "C"

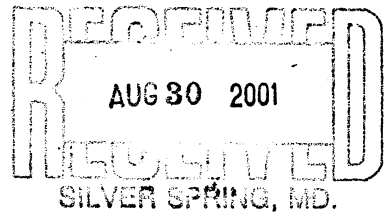
COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-538

PETITION OF STANLEY A. HOFFBERGER
T/A ASPEN HILL RACQUET CLUB
(Hearing held February 17, 1977)

OPINION OF THE BOARD

COMMUNITY PLANNING
THE MONTGOMERY NATIONAL CAPITAL
PARK AND PLANNING COMMISSION



These proceedings come before the Board on the application of Stanley A. Hoffberger and the Aspen Hill Limited Partnership for a special exception pursuant to Sections 59-36 and 59-146 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1972, as amended) to permit the construction and operation of a private racquet club. The subject property is Lots 6, 7 and 8, Homecrest Subdivision, at 14521, 14511, and 14501 Homecrest Road, Wheaton, Maryland, in an RE-2 Zone.

Decision: Special exception granted, subject to conditions stated herein.

Petitioner's witnesses appeared at the hearing and agreed to be bound by the following testimony and evidence of record:

I. Previous Special Exception for Private Club

In the Board of Appeals Case No. S-373, by decision dated April 15, 1975, the Board granted a special exception pursuant to Sections 59-36 and 59-146 of the Zoning Ordinance permitting the construction and operation of a private club, known as the Aspen Hill Racquet Club, to the same petitioners as request this special exception. The proposed club granted in Case No. S-373 was to be located upon property leased by the petitioner on the east side of Homecrest Road, approximately 2,500 feet north of the intersection of Homecrest Road and Bel Pre Road. That site consisted of approximately 13.62 acres, formerly Lots 12 and 13 (which have been replatted as Lot 14) of the Homecrest Subdivision, further known as 14701 Homecrest Road, Wheaton, Maryland. By decision dated July 8, 1976, the Board extended the time period to establish that club and permitted certain modifications to the approved plans. The applicant in the present case proposes, in effect, to move the facilities proposed for the previously approved Aspen Hill Racquet Club from Lot 14 on the east side of Homecrest Road to Lots 6, 7 and 8, also located on the east side of Homecrest Road, and under purchase contracts by petitioner.

The petitioner requests relocation of the proposed club for the following reasons:

"1. Further market and economic feasibility studies indicate that all of the indoor facilities proposed should be built initially in order to provide sufficient winter and night facilities for use by Club members. The approved location of the septic fields on the present Club site, on Lot 14, does not permit construction of one building housing three of the indoor courts until public sewer becomes available. Location of septic fields on the proposed new Club site will permit full construction of all of the indoor facilities as proposed.

"2. The new site contains more acreage and provides additional space for a more functional and convenient layout of the Club's facilities. Lot 14 contains approximately 13.628 acres of land, while Lots 6, 7 and 8 consist of approximately 16.049 acres of land. The additional space, combined with the ability to build all of the indoor facilities on septic systems, better achieves the goal of the Club to provide attractive and flexible facilities to its members without creating adverse impact upon adjacent properties."

At the request of the applicant, the Board has incorporated into the record of this case the entire record, evidence and testimony of Case No. S-373, as much of the factual information, data, reports and testimony presented in that case are pertinent to consideration of the present case and were referred to during the testimony presented in this case.

II. Location of Club

Lots 6, 7 and 8 upon which the proposed club is to be located are also identified as 14501, 14511 and 14521 Homecrest Road. The southernmost boundary of these lots is approximately 800-900 feet north of the intersection of Homecrest Road and Bel Pre Road and approximately 1,500 feet south of the property which was the subject of Case No. S-373. The lots are zoned RE-2 and are recommended by the Aspen Hill Master Plan for R-200 zoning. Both zoning categories permit the proposed use by special exception.

The subject property has approximately 712 feet of frontage along the east side of Homecrest Road and a depth of approximately 1,000 feet. Substantial portions of the property are wooded, and the topography could be characterized as rolling. There are presently three residences located upon the 16-acre site. Two of these residences will be razed so as to accommodate the proposed development. The residence which is located upon Lot 8 will be retained for residential use by a club caretaker who will also serve as a night watchman. The property is bounded to the south by vacant land and

several single-family residences which front along Bel Pre Road and are situated on deep lots (approximately 850 feet in depth). To the east is the Argyle Country Club. To the north, along the east side of Homecrest Road, there are scattered single-family residences situated upon large lots. To the west, across Homecrest Road, there are also scattered single-family residences. Lot 5 which is located directly across Homecrest Road from the subject property is currently the subject of Board of Appeals Petition No. S-542, a request for a special exception to permit the construction and operation of a 136-unit housing for the elderly project, to be developed on a 4.7 acre tract by the National Capital B'nai Brith Housing Foundation.

III. Membership, Operations and Facilities

The facilities proposed to be located upon the new site are essentially the same as those already approved by the Board of Appeals for the old site:

- 12 Outdoor tennis courts and one practice court
- 9 Indoor tennis courts
- 3 Outdoor platform tennis courts (lighted)
- 4 Indoor racquet ball courts
- 2 Indoor Practice lanes
- Clubhouse, including locker rooms, lounges, offices, snack bar, children's area, pro shop, storage rooms and exercise areas
- 135 Parking spaces (2 spaces more than the number provided in Case No. S-373)

As the applicant testified, in all respects other than the physical layout of these facilities, the number and type of facilities and the operational characteristics of the proposed club are essentially unchanged from the club previously approved by the Board.

The proposed number of memberships in the club will not exceed 1,800, with memberships available on an annual or seasonal basis for single adults, families and youngsters under the age of 18, together with a special junior development membership program to help develop skills of youngsters who might not otherwise be able to be members. Club facilities are to be available only to members and their guests. It is intended that the club offer its members programs of individual, group, adult and children's lessons, clinics and camps. While no public tournaments are proposed, the club might join with other clubs for inter-club league competition; have "ladders" and intramural and intermural club tournaments; participate in programs for the development of exceptional junior players; and permit its facilities to be used by its members for private

tennis parties.

The snack bar in the lounge is proposed to serve hot and cold sandwiches, salads or other foods not requiring a full kitchen and refreshments. The club intends to apply for a license to sell beer and wine in the snack bar for the convenience of the club members. A small tennis pro shop will carry racquet sports equipment, supplies and merchandise for the convenience of club members and their guests. The clubhouse will be open for use by members from 7:00 a.m. to 12:30 a.m.

The club staff will include a manager, bookkeeper, sales-clerical personnel, maintenance employees, snack bar operators, court attendants, and tennis professionals and/or instructors. The average number of employees working at the facility at any one time will be 8 to 10 during the winter and 10 to 12 during the summer.

All of these matters of club operation and staff have been reviewed by the Board previously and were approved in the Board's decision in Case No. S-373.

The proposed club court facilities are proposed to be generally available for use between the hours of 7:00 a.m. and 12:00 midnight. All twelve outdoor tennis courts will be open for use from 7:00 a.m. until dark during the summer season. The two outdoor all-weather tennis courts will be the only outdoor courts available for use during the winter season from 8:00 a.m. until dark. The three outdoor platform tennis courts will be available for play year-round from 7:00 a.m. to 12:00 midnight and (as in the previously approved club) are the only outdoor courts lighted for play after dark. The indoor facilities (nine tennis courts and four racquet ball courts) will be available for use from 7:00 a.m. until 12:00 midnight all year-round. These are the same hours of operation for the court facilities as have been approved by the Board for the club in Case No. S-373.

private club { Based upon the foregoing proposed methods of club operation and its characteristics of operation and membership, the Board finds that the proposed facility constitutes a private club within the meaning of the applicable provisions of the Montgomery County Zoning Ordinance.

The petitioner further testified that he intends to build only one Aspen Hill Racquet Club upon one site, and he proposes to abandon the special exception granted in Case No. S-373 if this petition is granted by the Board as requested by petitioner.

IV. Traffic and Access

The subject property fronts on Homecrest Road, a two-lane roadway paved 20 feet wide, running in a north-south direction. There are no sidewalks or shoulders on either side of the road. The posted speed limit is 25 miles per hour. Homecrest Road intersects Bel Pre Road approximately 800-900 feet south of the proposed site. This intersection is controlled by a stop sign on Homecrest. Homecrest is the only access road to, and presently dead-ends in, a residential subdivision ("Aquarius") north of the proposed racquet club site.

Bel Pre Road, a two-lane highway running in an east-west direction, is paved 24 feet wide with gravel shoulders on each side of the roadway. The speed limit on Bel Pre Road is 35 miles per hour. The Area Master Plan proposes that Homecrest Road be widened along the proposed site to primary standards (36-foot pavement within a 70-foot right-of-way), and be extended in a northeasterly direction through the Aquarius subdivision to Layhill Road. No funds are provided for this project at this time.

The applicant presented the report of Mr. John M. Wright, an expert traffic engineer (Exhibit No. 12(e)). Mr. Wright's report was based upon and was an update of previous reports and studies by his firm in connection with Case No. S-373. This report concludes that the capacity analysis performed in connection with Case No. S-373 is basically confirmed by a new traffic count and analysis made in November of 1976 at the intersection of Bel Pre and Homecrest Roads. The study shows that this intersection would accommodate both existing traffic and the traffic projected to be generated by the proposed club at a time of peak use of club facilities during peak traffic hours at Level of Service A. It should be noted that Bel Pre Road is scheduled for widening from two to four lanes in Fiscal Year 1979, which will further increase its traffic carrying capacity. The traffic reports further conclude that, even at peak club operation, the volume of traffic added to existing traffic on Homecrest Road will not overburden the road or create traffic hazards.

The technical staff of the Maryland-National Capital Park and Planning Commission concurred with the findings of the traffic consultant that there would be no adverse effect on the road system and that the Bel Pre and Homecrest Roads intersection would continue to function at Level of Service A even with the proposed racquet club traffic added to the existing traffic (see Exhibit No. 24(b)).

The applicant's traffic consultant also conducted a study of sight distances along Homecrest Road at the two entrances to the club site. This study concluded that all vehicle

sight distances are adequate, and that vehicles will be able to safely enter and leave both proposed driveways to the club site.

V. Site Development and Visual Impact

The technical staff of the Park and Planning Commission in its report stated, and the evidence submitted by the applicant demonstrates, that the proposed facility conforms to all applicable Zoning Ordinance area, building coverage, green space, setback and height requirements. The staff report further states that "the proposed landscaping is of sufficient size and number to provide good screening to adjacent properties" and that "the proposed site lighting of the facility should not affect adjacent properties."

The petitioner proposes an extensive plan of landscaping and screening by use of plantings and earth berms, together with the retention and utilization in the landscaping scheme of a major portion of the existing trees and ground cover now on the site. All club facilities and activities are centrally located upon the site. The buildings have been located so as to use the topography, earth berms, and screening to maximum effect. Additionally, the design of the buildings utilizes residential type architectural shapes, sizes and forms, as well as earth-tone building materials, and will blend harmoniously into the landscape and surroundings. The landscaping, design and location of both buildings and facilities produce a total club facility both compatible and not visually offensive.

VI. Parking and Internal Vehicle Circulation

* { The 135 spaces to be provided exceed the number of parking spaces either required by the County, or indicated as needed as the result of the applicant's own consultant's study of parking requirements for similar facilities located in Montgomery County. Information and studies submitted by the applicant in this case and in connection with Case No. S-373 demonstrate that the proposed parking is ample to accommodate the club operations.

* {

The Maryland-National Capital Park and Planning Commission staff report endorses this finding. The staff notes, however, that vehicle circulation would be improved if the two parking areas were connected by an interior driveway, so that it would not be necessary to drive from one lot to the other via Homecrest Road. The staff further states that "... the turn-around system proposed at the end of each parking bay is inadequate and a more appropriate method of providing turn-around ability should be required," and "Bicycle spaces required by Section 59-79.(d) of the Ordinance are not indicated."

The petitioner testified that he is willing to satisfy Park and Planning concerns, but he requested that final resolution of these matters be deferred pending the results of these discussions with the Fire Marshal regarding fire lane access to the buildings. The petitioner indicated that, if necessary, the modifications proposed by the Maryland-National Capital Park and Planning Commission and/or the Fire Marshal could be made without changing the location of any facility. The revised site plan (Exhibit No. 28) makes provision for the bicycle spaces required under Section 59-79.(d) of the Ordinance.

VII. Water and Sewer

Public water service is available to the subject property. It is proposed that the club be served by a septic system. The applicant stated that preliminary percolation tests indicate that the system is adequate. At the time of the public hearing, it had not been possible to obtain final approval, despite several scheduled attempts to make final tests, because of prolonged extreme cold weather. The applicant must obtain final septic system approval of the Montgomery County Department of Environmental Protection before building permits can be issued.

VIII. Storm Water Management

Based upon its review of the applicant's plans, the Park and Planning Commission staff report states that, "the proposed grading of the site will permit adequate on-site stormwater management and should not pose a problem to adjacent properties." As noted among the conditions to this grant, the applicant will be required to meet applicable standards to provide a storm water management plan to accommodate a ten-year storm.

IX. Effect of Proposed Special Exception on Economic Values

The applicant presented the reports and analysis of a qualified real estate appraiser, Mr. E. L. Dieudonne, Jr. (Exhibit No. 13(b) and (c)). These reports presented a study of records of sales of residential properties near several existing tennis facilities and country clubs in Montgomery County. Mr. Dieudonne's original study was done in connection with Case No. S-373, and an update of that study was provided in connection with the present case. These studies concluded that values of properties adjacent to or near tennis facilities and country clubs had increased, and that there was no indication that such facilities had any adverse effect on property values.

X. Lighting, Noise and Fumes

Security and safety lights for the proposed buildings

and parking lot will be low-yield lights which will not reflect light on adjacent properties. No outdoor tennis courts will be lighted. The three outdoor platform tennis courts will be lighted by relatively low level (fence height) non-glare type lighting. These courts are located behind the club buildings, adjacent to the Argyle golf course, and are well screened with landscaping.

XI. Conformity with Area Master Plan

The adopted Master Plan for the Aspen Hill Planning Area recommends that the subject property, and the land to the south along Homecrest Road (RE-2, two acre minimum), be zoned R-200 ($\frac{1}{2}$ acre). The use requested by the applicant, private racquet club, is permitted by special exception in both of these zones, provided it is compatible with residential uses and meets other standards set forth in the Zoning Ordinance.

XII. Advisory Recommendation of the Maryland-National Capital Park and Planning Commission

Both the Montgomery County Planning Board and its technical staff stated that the proposed use would not adversely affect the objectives and proposals of the Master Plan for that area, and recommended approval of the petition, subject to certain conditions noted in the staff report, all of which have been accepted or embodied in this Opinion.

XIII. Opposition

Opposition witnesses testified that provision for parking is inadequate in view of the potential maximum membership. Some witnesses stated that the narrow width of Homecrest Road, the provision of two separate driveways to the subject site, and the allegedly dangerous junction at Bel Pre Road create traffic hazards. Some opposed establishing a commercial venture (specifically a pro shop) in a residential area, and objected to the proposed request for license to serve beer and wine. Some alleged that operation of the proposed special exception would adversely affect the value of residential property, and that the use is incompatible with the residential neighborhood. It was suggested that a driveway connecting the two parking areas should be provided to alleviate potential for off-site vehicular circulation pattern utilizing Homecrest Road between the two parking lots.

XIV. Findings

Upon consideration of the above binding testimony and evidence of record, the Board finds that the petition meets the requirements of Sections 59-123, 59-124, 59-136 and 59-146 and other applicable provisions of the Zoning Ordinance,

in that the requested special exception, for the reasons stated hereinbefore and below:

(1) Will be consistent with the general plan for the physical development of the district, including the applicable master plan or portion thereof adopted by the Commission.

The Board finds that the proposed application, a private racquet club, is allowed by and consistent with the Master Plan, and that the granting of this special exception will have no detrimental effect on implementation of that plan.

(2) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of the proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses. The Board finds:

(a) That the 16-acre tract is more than adequate to accommodate the proposed facilities, and that the buildings will not appear unusually large because of their design, siting and relationship to the site and use of landscaping. The Board concludes that the buildings will be very well shielded from view by topography and landscaping. Furthermore, the Board finds that the subject buildings and facilities will be so designed and constructed that they will give the appearance of a residential character, and that they will be well landscaped and will blend in nicely with the surroundings.

(b) That use of the facility, based on the traffic studies and evidence of record, will not overburden or adversely affect vehicle or pedestrian traffic on Homecrest Road or at the intersection of Bel Pre Road and Homecrest Road.

(c) That the applicant has provided sufficient parking to accommodate persons expected to use the facilities proposed for construction.

(3) Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity.

(a) The Board finds that it was uncontradicted that property values, as reflected in sales of property adjacent to or near tennis facilities, tend to stay at least equal to those in the surrounding neighborhood, and in some cases increase because of the ready

availability and attractiveness of tennis facilities nearby. The Board finds that development of this racquet club will in no way be detrimental to the development of the general neighborhood.

(b) The Board finds that neither indoor nor outdoor courts, because of their siting and design with relation to neighboring properties, landscaping and buffering, will cause noise, vibrations, fumes, dust, glare or physical activity to adversely affect adjacent properties.

(4) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors, or workers in the area.

There was no probative evidence presented to show that the granting of this application will adversely affect any of the foregoing.

(5) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public improvements and will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Based upon the binding testimony and evidence of record, the Board finds that the proposed private club is served by adequate public facilities. The club will be developed upon an approved septic system and will provide required and adequate storm drainage in accordance with applicable laws and regulations and conditions imposed in this opinion by this Board. The Board finds that the subject club is served by adequate public roads and will have no detrimental effect on the safety of vehicular or pedestrian traffic. As stated elsewhere herein, the evidence of record demonstrates the traffic generated by the proposed club will be adequately and safely accommodated by the public roads without adverse impact upon the functioning of those roads. The Board finds that there will be no detrimental effect upon pedestrians who use Homecrest Road. It should also be noted that the Aquarius Subdivision is well north of the entrance to the proposed club, and therefore traffic generated by the proposed facility will not affect vehicular or pedestrian traffic within that subdivision in any way.

(6) Will not constitute a nuisance because of noise, traffic, number of people or type of physical activity.

The Board further finds, based upon the evidence of record with respect to the proposed manner of club operation

its layout and design and landscaping and screening, that the proposed private club, its facilities and activities will not produce noise, traffic, numbers of people or type of physical activity which would constitute a nuisance.

(7) The Board also finds, based upon its study of the evidence presented demonstrating the location, design and appearance of the proposed buildings and the landscaping proposed for the subject site, that the exterior appearance of the proposed buildings will blend harmoniously with their surroundings and will have suitable landscaping, screen planting and fencing.

The Board therefore grants the requested special exception subject to the following conditions:

1. The applicant shall obtain approval of the Soil Conservation Service and the Department of Environmental Protection for a stormwater management plan designed to accommodate surface water runoff from a ten-year storm.
2. Development shall be according to the revised site plan (Exhibit No. 28), with the exception that a driveway shall be extended on the east side of the building to provide a connection between the two parking areas.
3. Final landscaping, lighting, internal traffic circulation and screening plans shall be subject to review and approval of the Maryland-National Capital Park and Planning Commission technical staff. The applicant may make such modifications to the site plan as may be necessary to satisfy County Fire Code requirements.
4. Exact location and design of driveway access to Homcrest Road shall be subject to approval of the Montgomery County Department of Transportation.
5. No alcoholic beverages other than wine or beer may be served on the premises. Approval of a license to serve wine or beer is subject to action of the County Alcoholic Beverage Control Board. If such a license is approved, petitioner shall file a copy of said license in the records of the Board of Appeals and shall be responsible for ensuring that such beer and wine are consumed only on the club premises.
6. The petitioner shall cooperate with residents of the Aquarius subdivision if they desire to request the

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 23rd day of March, 1977.

Sollie H. Kyle
Clerk to the Board

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

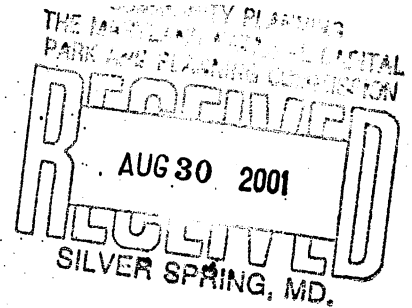
Section 59-122.(c) of the Montgomery County Zoning Ordinance 1972, as revised, requires that "On or before March 15 of each year, each applicant who has been granted a special exception shall file with the Department of Environmental Protection a sworn certificate specifying current hours of operation, number of employees and occupants, equipment utilized, and stating that such operation is in all respects in full compliance with the terms and conditions imposed by the Board; provided, however, that the first such certificate shall not be filed unless and until at least twelve months have elapsed since the date of the grant of the special exception."

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-538

PETITION OF STANLEY F. HOFFBERGER
t/a ASPEN HILL RACQUET CLUB

RESOLUTION TO AMEND OPINION OF THE BOARD
(Order adopted December 1, 1977)



Upon consideration of testimony by Stanley F. Hoffberger that substantial numbers of members have requested an earlier opening hour (i.e., 6:00 a.m. rather than 7:00 a.m.), and it appearing that such change can be made without adverse impact upon the neighborhood or upon traffic along roads leading to the facility,

THEREFORE, BE IT RESOLVED that Condition No. 8 of the Board's Opinion of March 23, 1977, shall be amended to read as follows:

"8. Hours of operation of the various court facilities shall be limited as follows:

Clubhouse: 7:00 a.m. to 12:30 a.m., daily

Indoor courts: 6:00 a.m. to 12:00 midnight, daily

Outdoor tennis courts: summer, 7:00 a.m. until dark
winter, 8:00 a.m. until dark

Outdoor platform tennis courts: 7:00 a.m. to midnight, daily."

BE IT FURTHER RESOLVED that the modified site plan, Exhibit No. 53(b) showing modified driveways and storm drainage plan, shall be, and hereby is accepted as the final site development plan.

The foregoing Resolution was proposed by Mr. Joseph E. O'Brien, Jr., and concurred in by Mrs. Marjorie H. Sonnenfeldt, Chairman, Mrs. Doris Lipschitz and Mrs. Shirley S. Lynne. Mr. Sheldon P. Schuman was necessarily absent and did not participate in the foregoing Resolution.

Entered in the Minute Book of
the County Board of Appeals this
7th day of December, 1977.

Julius H. Tate
Clerk to the Board

-2-

Also staggered hours were not taken into account. It was estimated that 27 to 33 additional peak hour trips would be generated by the requested facilities; these trips would not adversely affect traffic conditions in the area.

Present parking accommodates 135 vehicles. Standard per Ordinance 7.9001, 59-E-7.6 as amended, is 3.5 spaces per court for this type of facility. With the additional spaces being installed, the average will be 3.75 spaces per court. The observed use (an average of 65 cars) so far has been significantly below the standard requirement.

The perimeters of the property are almost completely screened except for the southeast corner adjacent to Argyle Country Club. The present screening is being augmented by 150 new seedlings this year, with more anticipated in program with Maryland-National Capital Park and Planning Commission.

No outside tennis court lighting exists or is planned for new courts.

Applicant stated there are currently approximately 1,700 members which includes 600 spouse and children. The largest membership group is from the 20906 mail zone area in which the club is located. Winter courts are scheduled by reservations only, whereas outdoor courts are available partly (8) by reservations and partly on a first-come, first-served basis. All racquetball courts are now subscribed between 4:30 p.m. and 10:30 p.m. Club staff has received many requests for additional racquetball time; they conducted a survey which indicated demand for more racquetball courts. Racquetball is usually played by two persons.

Fred Shaffer, member of the board of directors of the Argyle Country Club, and first vice president of the Argyle Land Company (adjacent property), knows of no objections by the Land Company. However, he has been working with the applicant to correct a problem caused by an increased flow of water from the Aspen Hill club property, which did not exist prior to its installation. Increased flow, particularly with heavy rains, has caused flooding and sediment deposits on the Argyle club fairway. Sediment deposits in retaining ponds can be dredged out and the ponds possibly enlarged. The parties are working toward an acceptable solution as they have in the past.

The petitioner, Stanley Hoffberger, stated that his engineer is checking condition as a result of a request of the Soil Conservation Chief. He noted that there are on-site stormwater management facilities, including two holding ponds (one near the southeast corner and one in the east-center of property), and a dam across the north central part of the property to direct off site water coming onto the subject property into a natural swale. The dam is designed for a ten-year storm. The stream flows through the natural swale from the northeast corner of the site onto Argyle property. Mr. Hoffberger noted that authorities would not issue a grading permit to construct the two new tennis courts requested until this problem was resolved.

Maryland-National Capital Park and
Planning Commission Recommendation

The Maryland-National Capital Park and Planning Commission's technical staff recommends approval of the proposal, observing:

"The staff has no objection to the applicant's request since the modification will generate only about 33 peak-hour trips. The intersection at Homecrest Road and Bel Pre Road is currently operating at level of service "A" during the evening peak hour and will not be affected by the additional traffic."

Findings of the Board

After reviewing all testimony, evidence and exhibits of the record which are binding on the petitioner, the Board finds the proposed amendment, as conditioned herein, meets both the general requirements for the grant of a special exception as set forth in Section 59-G-1.21 and the particular requirements as set forth in Section 59-G-2.24 of the Zoning Ordinance.

Accordingly, the requested amendment to the special exception is granted, subject to the following conditions:

1. Construction shall be in accordance with the plans submitted in the record, Exhibit No. 4(b) (also Exhibit No. 10).

2. Petitioner shall obtain a use and occupancy permit from the Department of Environmental Protection prior to using the new facilities.
3. Special exception holder shall submit a detailed plan for landscaping and screening to the technical staff of the Maryland-National Capital Park and Planning Commission for review and approval. Copy of the approved plan shall be submitted to both the Board of Appeals and the Department of Environmental Protection for the record.
4. Hours of operation of the various court facilities shall be limited as follows:


Clubhouse: 7:00 a.m. to 12:30 a.m., daily.
Indoor courts: 6:00 a.m. to 12:00 midnight, daily.
Outdoor tennis courts:
 summer, 7:00 a.m. until dark
 winter, 8:00 a.m. until dark
Outdoor platform tennis courts:
 7:00 a.m. to midnight, daily.
5. No public exhibition matches or tournaments shall be held at the private club.
6. No outdoor courts other than the platform tennis courts may be illuminated for night play.
7. Total memberships shall not exceed 1800 at any one time.
8. Copy of the approved sediment control and storm water management plan shall be submitted to the Board of Appeals for the record.
9. No alcoholic beverages other than wine or beer may be served on the premises. Approval of a license to serve wine or beer is subject to action of the County Alcoholic Beverage Control Board. If such a license is approved, petitioner shall file a copy of said license in the records of the Board of Appeals and the Department of Environmental Protection, and he shall be responsible for ensuring that such beer and wine are consumed only on the club premises.

The Board adopted the following Resolution:

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

The foregoing Resolution was proposed by Mr. Wallace I. Babcock and concurred in by Mrs. Marjorie H. Sonnenfeldt, Chairman, Mrs. Shirley Lynne, Mrs. Doris Lipschitz and Mr. Joseph E. O'Brien, Jr.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 18th day of June, 1980.


Clerk to the Board

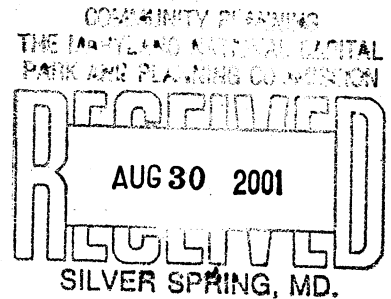
Any decision by the County Board of Appeals may, within 30 days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Note: See Section 59-A-4.53 of the Zoning Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-373

PETITION OF STANLEY A. HOFFBERGER
AND THE ASPEN HILL LIMITED PARTNERSHIP
(Hearing held June 3, 1976)



OPINION OF THE BOARD

These proceedings come before the Board on the request of the petitioner for an extension of time within which to implement the special exception granted by the Board April 15, 1975, and to revise the site plan and interior arrangements of the building in order to provide for a different arrangement of facilities.

Decision of the Board: Amendment of Special Exception approved, subject to conditions enumerated herein.

Request for One Year Extension of Time to Implement Special Exception

The Board of Appeals in Case No. S-373, by opinion dated April 15, 1975, granted the petition of Stanley A. Hoffberger, general partner and manager of the Aspen Hill Limited Partnership, for a special exception pursuant to Sections 59-36 and 59-146 of the Zoning Ordinance, to permit the construction and operation of a private tennis club. The site of the club consists of approximately 13.6 acres, Lots 12 and 13 of the Homecrest Subdivision, at 14701 Homecrest Road, Wheaton, Maryland. As initially approved, the club consisted of 10 indoor and 14 outdoor tennis courts, and was restricted to not more than 1800 memberships. A swimming pool which was proposed as part of the club's facilities was not approved; the Board determined that the pool should be considered at a subsequent public hearing before the Board not less than two years after the tennis club had commenced operations.

The record of the original hearing and all exhibits in the initial grant of Case No. S-373 are incorporated by reference into the record of this case and as a part of the subject petition. Mr. Stanley A. Hoffberger appeared and testified, and agreed to be bound by the testimony and exhibits in the record to the effect that:

The petitioner sought an additional 12-month extension of time within which to implement the special exception, on account



COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-373

Decision S-373
4/15/75
THE MARYLAND CAPITAL
BANK AND PLANNING DEPARTMENT
RECEIVED
AUG 30 2001
SILVER SPRING, MD.

VOID

PETITION OF STANLEY A. HOFFBERGER
(Hearings held January 23 and February 6, 1975)

OPINION OF THE BOARD

These proceedings are on the application of Stanley A. Hoff-berger for a special exception pursuant to Sections 59-36 and 59-146 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1972, as amended) to permit the construction and operation of a private tennis club (consisting of both indoor and outdoor tennis courts and an outdoor swimming pool). The subject property is Lots 12 and 13, containing approximately 13.628 acres, Homecrest Subdivision, 14701 Homecrest Road, Wheaton, Maryland, in an RE-2 (former R-A) Zone.

Decision: Special Exception granted, subject to conditions noted herein.

The applicant requests a special exception to permit the construction and operation of a private tennis club. The applicant proposes a three-phase development program. Phase I consists of the construction of 7 indoor courts which will be housed in two buildings connected by a service core; 10 outdoor courts, a small club house, and 93 parking spaces. These facilities can be developed without the necessity of obtaining public sewer because the applicant intends to utilize an existing septic system on the subject property. Phase II includes 4 more outdoor courts, a swimming pool (capacity 250 persons) and 40 additional parking spaces. Phase III involves construction of 3 additional indoor courts. Construction of the swimming pool is dependent upon availability of public sewer. Applicant testified that tennis facilities outlined in Phases II and III, which are not dependent on public sewer, will be built as demand indicates need.

MEMBERSHIP AND OPERATIONS

The applicant testified that the total number of tennis-playing memberships will not exceed 1,800 at any one time. Memberships will be available for winter season only, for summer season only, or for the full year. The applicant also proposes to construct a small outdoor swimming pool for use solely by tennis members. The applicant represented that no separate swimming pool memberships will be allowed.

The facilities will include a sandwich and snack bar, and vending machines for soft drinks and candy. No kitchen facilities will be available. The applicant intends to apply for a license to sell beer and wine at the snack bar. There will be a tennis pro shop, which will sell tennis equipment for the convenience of the members.

Seasonal and daily use of the courts and proposed pool will be in accordance with the following proposed schedule of operations:

FACILITY	SUMMER SEASON	WINTER SEASON
Outdoor Courts	(April 1-Nov. 30)	(Dec. 1-March 31)
10 Clay	7 am - 7 pm	Closed
4 All Weather	7 am - 7 pm	8 am - 4 pm
Indoor Courts	(May 1-Sept. 30)	(Oct. 1-April 30)
4 air conditioned	7 am - Midnight	7 am - Midnight
6 non-air-conditioned	7 am - Midnight	7 am - Midnight
Swimming pool	Memorial Day through Labor Day	Labor Day through Memorial Day
	9 am - 7 pm	Closed
Club House	7 am - 12:30 am	7 am - 12:30 am

CONFORMITY WITH AREA MASTER PLAN

The property lies within the area covered by the approved and adopted Master Plan for the Aspen Hill Planning Area.

This plan recommends that the subject property, and the land to the south along Homecrest Road (RE-2, 2 acre minimum), be zoned R-200 (1/2 acre). The use requested by the applicant, private tennis club, is permitted by special exception in both RE-2 and R-200 Zones, provided it is compatible with residential uses and meets other standards set forth in the Zoning Ordinance.

The subject petition was referred to the Montgomery County Planning Board, which is responsible for preparing Master Plans and advising on compatibility of proposed zoning and special exceptions with adopted plans. Both the Board and its technical staff stated that, in their opinion, the proposed use would not adversely affect

the objectives and proposals of the Master Plan for that area, and recommended that the proposal be approved.

ACCESS

The subject property fronts on Homecrest Road. Homecrest Road is a two-lane roadway, paved 20 feet wide, running in a north-south direction. There are no sidewalks or shoulders on either side of the road. The posted speed limit is 25 miles per hour. Homecrest Road intersects Bel Pre Road approximately 2,500 feet south of the proposed site; this intersection is controlled by a stop sign on Homecrest. Homecrest is the only access road to, and presently dead-ends in a residential subdivision ("Aquarius") a short distance north of the proposed tennis club site.

Bel Pre Road, a two-lane highway running in an east-west direction, is paved 24 feet wide with gravel shoulders on each side of the roadway. The speed limit on Bel Pre Road is 35 miles per hour. The adopted Capital Improvement Program shows that Bel Pre Road is scheduled for widening to a four-lane highway in fiscal year 1977. The Area Master Plan proposes that Homecrest Road be widened along the proposed site to primary standards (36-foot pavement within a 70-foot right-of-way), and be extended in a northeasterly direction through the Aquarius subdivision to Layhill Road. Improvement of Homecrest is not scheduled on any adopted Six Year Capital Improvement Program, however.

WATER AND SEWER

Of the entire proposed development program, the swimming pool is the only portion dependent upon availability of public sewer. At the time of the hearing on this application, the property was in Sewer Service Category I; applicant indicated that he was applying for transfer into Category II, which transfer was approved by the County Council in March, 1975. Phase I of the applicant's development program will utilize an existing septic system presently serving a single-family residence on the subject property. Preliminary percolation tests indicate that the system is adequate, but the applicant must obtain approval of the Montgomery County Department of Environmental Protection before building permits can be issued. Additional tennis facilities proposed in Phases II and III are not dependent on public sewer, but the swimming pool could not be built until the current moratorium in the Anacostia Basin is lifted and adequate sewerage capacity is available.

STORM WATER MANAGEMENT

The applicant submitted to the staff of the Park and Planning Commission a preliminary plan designed to accommodate runoff from a two-year storm. The staff reports that

"The plan as it stands, does not adequately control storm water and poses a threat to the foundations of several buildings. For these reasons, we recommend that approval of this plan be conditioned upon a revised and approved storm water management plan."

The staff suggests that, to assist in alleviating any adverse effect of water runoff from the subject property due to an increase in area covered by impervious surfaces, the applicant should be required to submit for approval by the Soil Conservation Service an acceptable storm water management plan designed to accommodate a ten-year storm.

SITE DEVELOPMENT AND VISUAL IMPACT

The property in question is rectangular in shape; it has approximately 470 feet of frontage along the east side of Homecrest Road and extends in an easterly direction to a depth of approximately 1,300 feet. Portions of the property are wooded. The proposed site plan meets and exceeds Zoning Ordinance requirements with regard to minimum area, building coverage, and setbacks.

The property is bounded to the north by a wooded area on either side of a small stream, beyond which lies the Aquarius subdivision. The Aquarius complex includes 138 duplex (two-family) homes of recent construction. To the west, across Homecrest, there are several well-maintained single-family residences, all on tracts of land approximately 2 acres or larger. Further west is a townhouse complex fronting on Leisure World Boulevard. To the south, along the east side of Homecrest Road, are a series of single-family residences and vacant lots, all at least 2 acres. The property is bounded on the east and southeast by the Argyle Country Club golf course.

The technical staff of the Park and Planning Commission in its report concerning the subject petition (Exhibit No. 26(b)) stated that:

"The various plans submitted by the applicant demonstrate in the staff's opinion, a most interesting and imaginative use of the land in question...the topography of the site undulates and there are substantial differences in elevation

throughout the tract. The various buildings are three in number, the closest of which has been set back well over 700 feet from Homecrest Road. The buildings, which are proposed to be constructed in three phases...are sited in such a fashion so as to take advantage of the undulating topography. They have been located on the down-side slopes of the existing knolls so as to materially reduce the visual image, and in addition the buildings have been depressed into the slopes which serves effectively to assist in reducing the height above grade of the buildings."

The technical staff additionally stated:

"In further attempt to insure that the proposed facilities are compatible and not visually offensive, extensive screening is proposed; approximately 150 trees will be planted and utilized in connection with earth berms to screen the facility from view from Homecrest Road and adjoining residences."

The applicant proposes to use building materials, including a non-reflective roofing surface, that will help the buildings blend harmoniously into the landscape and surroundings.

TRAFFIC

Several questions regarding traffic volume and safety have been raised. Each will be examined separately.

A. Traffic on Homecrest Road

As previously stated, Homecrest Road is a two-lane road which provides the only access to the Aquarius subdivision. The applicant's traffic engineer testified that, based on a study of operating experience at another indoor tennis facility operated by the applicant (the Cabin John Tennis Club), and on projections of the use of the proposed tennis facilities, the maximum number of cars entering and exiting the subject property would be 96 cars per hour. It was his opinion that this volume of traffic added to existing traffic on Homecrest Road would not overburden the road, and would not create traffic hazards on Homecrest.

B. Visibility and Sight Distances along Homecrest Road

Opponents of the application questioned the adequacy of sight distances at several points along Homecrest Road, particularly at the point at which the proposed Club driveway would be located. The applicant's witness testified that, according to accepted traffic

Case No. S-373

standards, the safe stopping distance for a vehicle traveling 25 miles per hour (the posted speed limit on Homecrest Road) is 147 feet. He further testified that the minimum sight distance required for a secondary road such as Homecrest is 175 feet, and stated that the vehicle-to-vehicle sight distance northward from the point at which the proposed club driveway intersects Homecrest is in the range of 600 to 800 feet. A low point in the road, where it crosses a stream, is about 500 feet north of the proposed club entrance. There are no sight restrictions at this point. The witness concluded that visibility along Homecrest Road is adequate for safe driving at the posted speed limit, and that there is no danger of blind spots which could cause accidents. The applicant showed films of the site to amplify this point. All members of the Board participating in this opinion visited the site, personally considered this question, and concur with the finding that sight distances are quite adequate for safety.

C. Intersection of Homecrest and Bel Pre Roads

Bel Pre Road is a major arterial highway, and is scheduled for widening in FY-1977. The applicant's traffic expert testified that the intersection currently operates at Service Level A during peak traffic hours, and that the intersection should continue to function at Level A even with the added vehicle traffic from the proposed special exception use. He concluded that the development of the proposed tennis club would use only a small portion of the reserve capacity at this intersection, and further indicated that the flow of traffic on Bel Pre Road will be improved when that road is widened.

Additionally, the report of the traffic expert was reviewed by the traffic engineer of the Park and Planning Commission. His report indicates

"there is no current traffic growth for the intersection of Bel Pre and Homecrest Road other than provided in the traffic analysis by Hunnicutt & Neale. I concur with their analysis with one minor exception. The report assumes that only the tennis players will use the swimming facilities. My belief is that the swimming pool will attract users other than those who desire to play tennis. This additional traffic will affect traffic operation at the Bel Pre-Homecrest intersection not accounted for in the analysis; however, the intersection should continue to operate at an acceptable level of service, that is, level of service B or better."

EFFECT OF THE PROPOSED SPECIAL EXCEPTION ON ECONOMIC VALUES

The applicant presented a qualified real estate appraiser, Mr. E. L. Dieudonne, Jr., who presented a study of records of sales of residential properties near several existing tennis facilities and country clubs in Montgomery County. His studies conclude that values of properties adjacent to or near tennis facilities and country clubs had increased, and that there was no indication that such facilities had any adverse effect on property values.

The applicant proposes 93 parking spaces to accommodate 10 outdoor courts and 7 indoor courts to be built in Phase I, and 40 additional parking spaces for Phase II which will consist of 4 additional outdoor courts and a swimming pool. No additional parking spaces are proposed for Phase III which will consist of 3 additional indoor courts.

LIGHTING, NOISE, FUMES

Security and safety lights for the proposed buildings and parking lot will be low-yield lights which will not reflect light on adjacent properties. The outdoor tennis courts will not be lighted. The tennis courts are so located that no noise from the facility should be audible at the closest residence, on the south, more than 150 feet away from the closest outdoor court. No objectionable fumes or noises would be emitted from the proposed tennis club facility.

OPPOSITION

Several residents of the Aquarius subdivision, and owners of single-family homes along Homecrest Road testified in opposition to this petition. The protestants' main concern was the increase of traffic on Homecrest Road, the sole access to the Aquarius subdivision. Some testified that pedestrians and bicyclists as well as automobiles using Homecrest would be endangered if the club were developed as proposed.

The protestants also maintained that the proposed buildings would be unsightly and aesthetically offensive, especially when viewed from the rear of some of the homes in Aquarius.

Some feared that the number of parking spaces proposed by the applicant would be insufficient, and that club members would park along Homecrest Road, creating a nuisance and a safety hazard. They were particularly concerned about the swimming pool because they feared that it would attract more use, more traffic, and more demand for parking than the applicant proposes to provide.

Mr. O'Neill, a resident of Homecrest Road and an architect by profession, testified that sight distances are not adequate for safe driving at several points along Homecrest, since vehicles travel, in his opinion, in excess of the posted speed limit of 25 miles per hour.

Other protestants objected to construction of a private club facility in a residential zone, and stated that the facility was not needed in the area.

FINDINGS

Upon consideration of the above testimony and evidence of record, the Board finds that the petition meets the requirements of Section 59-123 of the Zoning Ordinance, in that the requested special exception:

"(1) Will be consistent with the general plan for the physical development of the district, including any master plan or portion thereof adopted by the commission."

The Board finds that the proposed application, a private tennis club, is allowed by and consistent with the Master Plan, and that the granting of this special exception will have no detrimental effect on implementation of that Plan.

"(2) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity traffic and parking conditions and number of similar uses." The Board finds:

- (a) That a 13-acre tract is more than adequate to accommodate the proposed facilities, and that the buildings will not appear unusually large because they will be built into the hillsides and shielded by earth berms. Members personally viewed the subject site from the rear yards of homes in the Aquarius subdivision, as well as from Homecrest Road, and conclude that the buildings will be very well shielded from view by topography and landscaping. Furthermore, the Board finds that the subject buildings and facilities will be constructed of materials that will give an appearance of a residential character, that they will be well landscaped, and will blend in nicely with the surroundings.
- (b) That use of the facility, based on the traffic studies discussed herein, will not overburden or adversely affect traffic on Homecrest Road or at the intersection of Bel Pre Road and Homecrest Road.
- (c) That the applicant has provided sufficient parking to accommodate persons expected to use the facilities proposed for construction. The Board finds however, that construction of the swimming pool shall be delayed for a

period of at least two years after the facility commences operation. Before applying for a building permit to construct the swimming pool, the applicant shall appear at a public hearing before this Board to review the impact of traffic from the facility and to determine whether proposed parking is sufficient to accommodate the proposed swimming pool, as well as the tennis courts.

- (d) That there are no indoor tennis facilities in the area, so that the addition of this tennis facility will not constitute a multiplicity of similar uses.

"(3) Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity."

- (a) The Board finds that it was uncontradicted that property values as reflected in sales of adjacent to or near tennis facilities tend to stay at least equal to those in the surrounding neighborhood, and in some cases increase because of the ready availability of tennis facilities nearby. The Board finds that development of this tennis club will in no way be detrimental to the development of the general neighborhood;

- (b) The Board finds that the indoor courts and outdoor courts, because of their distance from neighboring properties, landscaping and buffering, will not cause noise, vibrations, fumes, dust, glare or physical activity to adversely affect adjacent properties.

"(4) Will have no detrimental effect on vehicular or pedestrian traffic."

The Board finds that the grant of this special exception will not adversely affect pedestrian traffic. Although area residents expressed fears that the increase in vehicle traffic generated by the operation of the proposed club may be detrimental to pedestrians who use Homecrest, the Board finds no probative evidence has been introduced to show that vehicles using Homecrest for access to tennis facilities will have any peculiar or adverse effect different from other vehicles which normally use Homecrest Road. It should also be noted that the Aquarius Subdivision is approximately 1/4 mile north of the entrance to the proposed club, and therefore traffic generated by the proposed facility will not affect vehicular or pedestrian traffic within that subdivision in any way.

"(5) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area."

There was no probative evidence presented to show that the granting of this application will adversely affect any of the foregoing;

"(6) Will not, in conjunction with existing development in the area and development permitted under existing zoning, overburden existing public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public improvements."

The Board finds that the tennis facilities will rely on an existing septic system, so that they will have no adverse effect on sewers. The septic system shall be subject to approval of the Department of Environmental Protection, and only those facilities certified to be accommodated by septic service shall be constructed. Construction of the swimming pool shall not commence until public sewer service is available to the area.

As to the other facilities mentioned in this paragraph, the Board finds no probative evidence that the granting of the special exception will have any adverse effect on any of the foregoing.

Moreover, the proposed project meets requirements set forth additionally in Section 59-146, in that the proposed private club will not constitute a nuisance, because of noise, traffic, number of people or type of physical activity. Accordingly, the requested special exception is granted to the petitioner only, subject to the following conditions:

(1) Before applying for a building permit, the applicant shall obtain approval of the Soil Conservation Service and the Department of Environmental Protection for a storm-water management plan designed to accommodate surface water runoff from a ten-year storm.

(2) Landscaping, lighting and screening plans shall be subject to review and approval of the Montgomery County Planning Board.

(3) No exhibition matches or tournaments shall be permitted to be held at the proposed private club.

(4) No alcoholic beverages other than wine or beer may be served on the premises. Approval of license to serve wine or beer is

subject to action of the Alcoholic Beverage Control Board.

(5) No outdoor tennis courts shall be illuminated for night play.

(6) Issuance of a building permit for the swimming pool shall be delayed until at least two years after the club opens operations. The applicant, before applying for a building permit to construct the swimming pool, shall appear at a public hearing before this Board to determine whether the proposed parking facilities are adequate, and whether traffic generated by use of the proposed swimming pool can be accommodated without adverse effect on the neighborhood.

(7) Any pond designed to retain surface water more than three hours shall be fenced and landscaped.

(8) The applicant shall cooperate with residents of the Aquarius subdivision if they desire to request the County to construct a bicycle and pedestrian path along Homecrest Road.

(9) Approval of septic system capacity shall be certified by the Department of Environmental Protection and a letter indicating that approval shall be submitted to the Board for the record in this case.

(10) Club members shall be instructed not to travel at speeds in excess of marked speed limits on Homecrest Road. Club members shall be instructed to park cars only on club property, and not on Homecrest Road.

The Board adopted the following Resolution:

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

The foregoing Resolution was proposed by Mr. Sheldon P. Schuman, and concurred in by Mrs. Marjorie H. Sonnenfeldt, Chairman, Mrs. Shirley S. Lynne and Mr. Joseph E. O'Brien, Jr. Mrs. Doris Lipschitz did not hear this case and did not participate in the foregoing Resolution.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 15th day of April, 1975.

Dallis N. Korte
Clerk to the Board

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

of unforeseen difficulties and delays which have been encountered in the preparation of the land and other factors necessary to begin building the club facilities. He testified that the tests necessary for approval of the proposed septic system had taken longer than was originally foreseen, and that additional test data required by government authorities to determine the precise location of the proposed septic field could not be obtained prior to January, 1976. These data in turn necessitated certain modifications to the site plan in order to accommodate the septic field. In addition, he stated that a change in the criteria used by the Fire Marshal's office had made it necessary to alter the location of two of the indoor tennis court buildings in order to accommodate a 20-foot wide fire vehicle access driveway.

Mr. Hoffberger stated that the proposed septic disposal system has now been approved, as indicated by a memorandum from the Department of Environmental Protection (Exhibit No. 85), the approved Preliminary Plan of Subdivision (Exhibit No. 76), and the approved Record Plat (Exhibit No. 86). The revised site plan (Exhibit No. 77) shows the relocated buildings and driveway required by the Fire Marshal, as well as revised arrangements for parking, and certain new facilities requested by the petitioner in this proceeding. This plan shows that two indoor tennis buildings (Buildings "A" and "C") will be located further from the property lines than originally proposed, and thus will be somewhat further away from the closest adjacent residence than in the original site plan approved by the Board in Case No. S-373. ✓

Proposed Modification in Facilities

Mr. Hoffberger testified that the petitioner is abandoning plans to install a swimming pool at the club site, and proposes to substitute three lighted outdoor platform tennis courts, as shown on Exhibit No. 69(c). In addition, petitioner's marketing concept has changed somewhat, and he proposes that Building "B" (which was originally planned to house 4 indoor tennis courts) instead contain 3 indoor tennis courts, 4 racquetball courts and 2 indoor practice tennis lanes. No increase in total membership is anticipated.

The entire project will be developed in two phases, as follows:

Phase I will include 10 outdoor tennis courts and 3 lighted

platform tennis courts. Indoor tennis Buildings "A" and "B" will contain 3 indoor tennis courts, 4 racquetball courts and 2 practice tennis lanes. One hundred parking spaces will be installed to service these facilities.

Phase II (which would be constructed at such future date as the demand develops) will include 2 additional outdoor tennis courts, 3 additional indoor tennis courts to be housed in Building "C", and 33 additional parking spaces. The swimming pool which was originally planned to be constructed in Phase II will be eliminated.

Thus, in place of the 14 outdoor tennis courts and 10 indoor tennis courts originally approved by the Board, the petitioner proposes to construct a total of 12 outdoor tennis courts, 9 indoor tennis courts, 3 platform tennis courts, and 4 racquetball courts, or a net increase of 4 courts in the total construction package. The first phase of construction, however, would not involve any more facilities than the total approved by the Board in the original grant of the special exception.

Mr. Hoffberger also introduced a revised landscape and screening plan (Exhibit No. 71(b)), which has been approved by both the Technical Staff of the Maryland-National Capital Park and Planning Commission and the Montgomery County Planning Board, as required by Condition No. 2 of the Board's opinion in Case No. S-373. This plan indicates that a line of evergreen trees will be installed along the southern property line adjacent to the single-family residence to the south. These trees will serve to screen the lights from the platform tennis courts which will be located approximately 80 feet from the southern property line, as shown on Exhibit No. 69(c).

Employees, Hours of Operation, and Traffic

Petitioner testified that no additional employees beyond those envisioned at the time of the original grant of the Special Exception would be required to service the amended facilities and site plan. The tennis club would operate during the summer season from 7:00 a.m. to 7:00 p.m., with indoor tennis play from 7:00 a.m. to midnight. Winter season outdoor time would run from 8:00 a.m. to 4:00 p.m., with indoor time from 7:00 a.m. to midnight. These are the same time schedules previously approved by the Board in Case No. S-373. Winter time play on the lighted platform tennis courts would end at midnight.

Petitioner testified that the 133 parking spaces shown on

the revised site plan are substantially more than the number required to service club players, even in the period of maximum usage of all club facilities, i.e., the month of October.

With regard to traffic, the petitioner submitted a study by Hunicutt & Neale, Inc., (Exhibit No. 64) which indicates that the club facilities proposed to be constructed in Phase I will not increase traffic over that level which was envisioned for the total club operation as approved by the Board in Case No. S-373. The net addition of 4 courts to the total facilities proposed for Phases I and II will produce only a slight increase in the level of traffic previously approved by the Board. The traffic study indicates that during the evening peak hour, the intersection of Homecrest and Bel Pre Roads is presently operating at Service Level A; the intersection would continue to operate at Service Level A if all facilities were constructed and operated as proposed. Compared to a maximum of 96 hourly trips estimated for the club as originally approved with 24 tennis courts, the modification in club facilities would result in an estimated increase in peak hour traffic of 18 vehicle trips per hour. The traffic study notes that all facilities would be in full operation during only one month of the year (October); during the other 11 months, either the outdoor court facilities would not be used to capacity, or only a portion of the indoor courts would be in use.

Mr. John M. Wright appeared and testified as an expert traffic engineer, stating that, according to the data developed in the traffic study, the additional traffic generated by the proposed modification of facilities would not have any adverse impact on adjacent or surrounding properties, or on the flow of traffic on Homecrest or Bel Pre Roads, or at the intersection of those two roads. He stated that the proposed change in club facilities would have a minimal effect on the roadway system, and that that system would be able to safely and effectively carry traffic generated by the proposed club.

The report of the Technical Staff of the Maryland-National Capital Park and Planning Commission (Exhibit No. 71(c)) indicates that the staff review of the applicant's traffic study endorsed the conclusions of that report. The Planning Staff comments as follows:

"In reviewing the proposed modification, I found the traffic generation of the proposed facilities to be acceptable. In analyzing the impact of the modification on the Homecrest/Bel Pre Roads intersection,

traffic count maps prepared by the County Department of Transportation show a negligible decrease in the daily traffic on Bel Pre Road between 1973 and 1974, from 13,500 vehicles to 13,225. The intersection is operating at service level A during the peak hour with this daily traffic on the road.

"The Capital Improvements Program contains a project for widening Bel Pre Road to four lanes in 1980, with the justification that the daily traffic is expected to be 17,000 vehicles in 1976. With 10 percent of the ADT occurring in the peak hour, and with the traffic generated by the development, the intersection will operate at service level B.

"In conclusion, approval of the proposed modification will be acceptable to the Transportation Planning Division."

Conformity with Area Master Plan and Harmony with Surrounding Neighborhood

Mr. Hoffberger testified that, in his opinion, the proposed modifications are consistent with the requirements of the Area Master Plan for Aspen Hill and Vicinity, and that the revision of facilities and the redesign of the site plan would have no adverse impact on nearby properties. He noted that the relocation of two indoor tennis buildings as required to meet the Fire Marshal's standards had resulted in the buildings being moved further from the property lines of the adjacent single-family residence. The revised landscaping plan (Exhibit No. 71(b)), which has been approved by both the Maryland-National Capital Park and Planning Commission Technical Staff and the Montgomery County Planning Board, retains the previously-approved scheme incorporating a combination of earth berms and selectively located screen planting along that portion of the property fronting Homecrest Road, and substantially increases the planting originally proposed along the southern property line, near the platform tennis courts. In addition to preserving much of the existing tree and plant material, the approved landscape plan provides for the installation of 160 trees, a number of which would be 20 feet high at the time of planting.

Advisory Recommendation of the Maryland-National Park and Planning Commission

The Maryland-National Park and Planning Commission

Technical Staff report indicates that the revised facilities and site plan, eliminating the proposed swimming pool and 2 outdoor tennis courts, and substituting 3 lighted platform tennis courts will not, in the staff's opinion, adversely affect the Master Plan for the area nor detrimentally affect the use or development of adjacent properties or the general neighborhood.

The Montgomery County Planning Board recommends approval of the proposed extension of time and modification of facilities, subject to conditions recommended by the Technical Staff. Both the staff and the Board approved petitioner's revised landscape plan (Exhibit No. 71(b)).

Opposition

No one appeared to testify in opposition, but two letters opposing the proposed modification of facilities were entered into the record. The First Aquarius Homes Association wrote that a vote taken of all families present at the annual meeting of the Homes Association on Tuesday, May 11, 1976, was to disapprove the amendments proposed by the petitioner, on grounds that the additional facilities would result in increased traffic which might render the immediate area unsafe (Exhibit No. 72). An adjacent property owner, Mrs. Elouise C. Young, wrote objecting to added noise and traffic.

Findings of the Board

Upon consideration of the evidence presented, the Board finds that the one-year extension sought by the petitioner is necessary and warranted, and the time for implementation of the Special Exception is hereby extended by one year, to April 15, 1977.

The Board reaffirms its findings in Case S-373 and further finds that the petitioner has met the burden of proof and that the proposed modification of facilities and site plan meets all requirements set forth in Sections 59-123 and 59-146 of the Zoning Ordinance, in that: the proposed additional facilities are consistent with the Area Master Plan, and will have no adverse impact on adjacent and surrounding properties. According to expert testimony and advice of the Maryland-National Capital Park and Planning Commission, the additional traffic generated by the net addition of four courts will be minimal, and will have no adverse effect on traffic safety or traffic flow in the area. The landscape and screening plan approved by the Technical Staff of the Maryland-National Park and Planning Commission and by the Montgomery County

Planning Board appears to provide greater screening from adjacent single-family homes than the original plan approved by the Board in its grant of the Special Exception; in particular, lights from the platform tennis courts (the only outdoor facilities to be illuminated) will be shielded by evergreen trees along the south property line. In all other respects, the Board finds that its findings made in the original grant of Case No. S-373 are not affected by the revisions proposed by the petitioner.

The Board therefore grants the one-year extension of time for implementation, and the modification of facilities and site plan requested by the petitioner, subject to the following conditions:

1. Time for implementation of the special exception is extended until April 15, 1977.
2. Construction shall be according to the revised site plan, Exhibit No. 77.
3. Before applying for a building permit, the applicant shall obtain approval of the Soil Conservation Service and the Department of Environmental Protection for a stormwater management plan designed to accommodate surface water runoff from a ten-year storm.
4. Any pond designed to retain surface water more than 3 hours shall be fenced and landscaped.
5. A lighting plan shall be subject to review and approval of the Planning Board's technical staff.
6. No exhibition matches or tournaments shall be held at the proposed private club.
7. No alcoholic beverages other than wine or beer may be served on the premises. Approval of a license to serve wine or beer is subject to action of the Alcoholic Beverage Control Board.
8. The petitioner shall cooperate with residents of the Aquarius subdivision if they desire to request the County to construct a bicycle and pedestrian path along Homecrest Road.

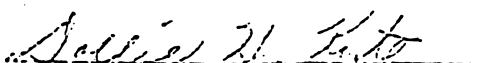
9. Club members shall be instructed not to travel at speeds in excess of marked speed limits on Homecrest Road. Club members shall be instructed to park cars only on club property, and not on Homecrest Road.
10. Condition No. 6 of the Board's original decision of April 15, 1975, shall be deleted.
11. Hours of operation shall be limited as follows:
 - Indoor tennis - 7:00 a.m. to midnight, daily, year-round
 - Outdoor tennis - 7:00 a.m. to 7:00 p.m., or dark (no court lighting permitted)
 - Platform tennis - (winter only) - 7 a.m. to midnight.
12. Platform tennis courts may be illuminated for night play.
13. Total membership shall not exceed 1800 at any one time.

The Board adopted the following Resolution:

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

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

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 8th day of July, 1976.


Clerk to the Board