

Case No.: CSP-15003
Recovery Centers of
America, Melwood Road Facility

Applicant: 4620 Melwood Road OPCO LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER OF APPROVAL WITH CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, that the application to approve Conceptual Site Plan 15003 (CSP-15003), for an 85,733 square foot, 120 bed, group residential facility and medical facility for 64 patients a day for recovering alcoholics and drug addicts located on the eastern side of Melwood Road, approximately 2,600 feet north of its intersection with Pennsylvania Avenue (MD 4), within Planning Area 78, Council District 8, be and the same is hereby APPROVED.

PROCEDURAL HISTORY

On or about December 1, 2016, the Planning Board considered evidence at a public hearing regarding CSP-15003. The plan was presented and approved without opposition. *See* PGCPB No. 16-142, (12/1/2016, Tr.).

On or about January 23, 2017, the Council elected not to review the decision by the Planning Board. *See* Zoning Agenda, 1/23/2017.

On or about February 8, 2017, Mary Joan Robertson, President of Melwood Road Civic Association, filed an appeal of the Planning Board's decision and requested oral argument before the District Council. *See* Appeal Letter, 2/8/2017.

On or about February 22, 2017, the Clerk of the Council sent notice of oral argument to all persons of record. *See* Notice, 2/22/2017.

On or about March 22, 2017, the Applicant, through counsel, filed a request to dismiss the appeal filed by Melwood Road Civic Association. *See* Letter to Dismiss Appeal, 3/22/2017.

On March 27, 2017, the District Council held oral argument.

FINDINGS AND CONCLUSIONS

Pursuant to the Land Use Article, Section 25-212, a person may make a request to the District Council for the review of a decision of the zoning hearing examiner or the planning board only if:

- (1) the person is an aggrieved person that appeared at the hearing before the zoning hearing examiner or planning board in person, by an attorney, or in writing; and
- (2) the review is expressly authorized under this division. *See* LU § 25-212, Md. Ann. Code, (2012, Supp. 2015).

To be a person *aggrieved*, “[t]he decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally.” *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137, 144, 230 A.2d 289, 294 (1967). “An adjoining, confronting or nearby property owner is deemed, *prima facie*, to be specially damaged and, therefore, a person aggrieved.” *Id.* at 145, 230 A.2d at 294. “A protestant is specially aggrieved when she is farther away than an adjoining, confronting, or nearby property owner, but is still close enough to the site of the rezoning action to be considered almost *prima facie* aggrieved, and offers ‘plus factors’ supporting injury.” *A Guy Named Moe, LLC v. Chipotle Mexican Grill of Colo., LLC*, 447 Md. 425, 451–453, 135 A.3d 492, 508–509 (2016) (quoting *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 85, 59 A.3d 545, 551-552 (2013)). In *A Guy Named Moe*, the Court of Appeal of Maryland stated

A review of our cases, where standing to challenge a rezoning action was at issue, reveals one critical point: proximity is the most important factor to be considered. The relevance and import of other facts tending to show aggrievement depends on how close the affected property is to the re-zoned property. There is, however, no bright-line rule for exactly how close a property must be in order to show special aggrievement. Instead, this Court has maintained a flexible standard, finding standing in cases that do not quite satisfy the “adjoining, confronting or nearby” standard of prima facie aggrievement, but are nudging up against that line. Protestants in such cases will be considered to pass the standing threshold if they allege specific facts of their injury. In other words, once sufficient proximity is shown, some typical allegations of harm acquire legal significance that would otherwise be discounted. But in the absence of proximity, much more is needed. For example, an owner’s lay opinion of decreasing property values and increasing traffic has been considered sufficient for special aggrievement when combined with proximity that is almost as great as in cases where properties are “adjoining, confronting or nearby.” Conversely, without sufficient proximity, similar facts will only support general aggrievement. For example, when the affected properties are not sufficiently close to the site to qualify as almost prima facie aggrieved, claims of increasing traffic, change in the character of the neighborhood, lay opinion projecting a decrease in property values, and limited visibility have been held to show only general aggrievement. *Id.* at 451–453, 135 A.3d 508–509.

Melwood Road Civic Association (MRCA) is located at 4800 Melwood Road, Upper Marlboro, Maryland 20772. The project site is located on the eastern side of Melwood Road, approximately 2,600 feet north of its intersection with Pennsylvania Avenue. *See* PGCPB No. 16-142, (12/1/2016, Tr., p. 1). Considering proximity alone, MRCA would be an aggrieved person to have standing to challenge Planning Board’s decision. MRCA did not however, participate, in person, in writing, or by an attorney, before the Planning Board, even though, for purposes of mailing, the record reflects that MRCA was a person of record. *See* PGCPB No. 16-142, Persons of Record List. *See also County Council of Prince George’s County v. Billings*, 420 Md. 84, 21 A.3d 1065 (2011) (On the issue of standing, the Court stated that under administrative law, and absent a controlling statute, a person must show that he was a party to the administrative proceedings and that he is aggrieved by the final decision of the agency).

The Planning Board may approve a Conceptual Site Plan if it finds that the Plan represents a most reasonable alternative for satisfying the site design guidelines without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make this finding, the Planning Board may disapprove the Plan. *See* PGCC § 27-276(b)(1), PGCPB No. 16-142, p. 30.

Before the District Council, MRCA contends as follows:

1. The property site located at 4620 Melwood Road, Upper Marlboro, Maryland, is in the middle of a well-established, historic, and gentrified community.

When reviewing a decision by the Planning Board in a Conceptual Site Plan, the Council shall affirm, reverse, or modify the decision of the Planning Board, or remand the Conceptual Site Plan one time to the Planning Board to take further testimony or reconsider its decision in accordance with specified grounds stated in the Order of Remand adopted by the Council. Where the Council approves a Conceptual Site Plan, it shall make the same findings which are required to be made by the Planning Board. If the Council fails to act within the specified time, the Planning Board's decision is automatically affirmed. *See* PGCC § 27-280 (d).

Upon review of the record, the District Council finds that the Planning Board did not err when it approved CSP-15003 because the subject property is located in the middle of a well-established, historic, gentrified community. The general purposes of Conceptual Site Plans are to provide for development in accordance with the principles for the orderly, planned, efficient, and economical development contained in the General Plan, Master Plan or other approved plan; to help fulfill the purposes of the zone in which the land is located; to provide for development in accordance with the site design guidelines established in this Division; and to provide approval procedures that are easy to understand and consistent for all types of Conceptual Site Plans. *See*

PGCC § 27-272(b). The specific purposes of Conceptual Site Plans are to explain the relationships among proposed uses on the subject site, and between the uses on the site and adjacent uses; to illustrate approximate locations where buildings, parking lots, streets, green areas, and other similar physical features may be placed in the final design for the site; to illustrate general grading, woodland conservation areas, preservation of sensitive environmental features, planting, sediment control, and storm water management concepts to be employed in any final design for the site; and to describe, generally, the recreational facilities, architectural form of buildings, and street furniture (such as lamps, signs, and benches) to be used on the final plan. *See* PGCC § 27-272(c). Planning Board found that CSP-15003 was in compliance with the requirements of the Zoning Ordinance. *See* PGCPB No. 16-142.

2. Shipley & Horne, P.A. counsel are aware of the immediate development requirements of providing notification to members of the community, neither adjacent property owners nor the civic association were given notice of, or the opportunity to discuss, the purpose and intent for the property prior to the Recovery Centers of America Melwood Road Facility purchase.

The County Code does not require that notice be provided to adjacent property owners or civic associations of the purpose and intent for the subject property prior to purchase.

3. Stakeholders, MRCA Board Members and Melwood Road resident property owners have expressed strong opposition to The Recovery Centers business based on their prior experience at this site, with a similar Behavioral Modification Clinical business.

The record does not contain any opposition from Stakeholders, MRCA Board Members and Melwood Road resident property owners. *See* PGCPB No. 16-142, (12/1/2016, Tr.). Regardless, the Board's decision was based on an application for a new conceptual site plan based on a different business model, filed by a new applicant. There is no evidence in the record that the Board approved CSP-15003 contrary to the provisions of the County Code.

4. The Westphalia Sector Development Review Council did not provide comment regarding the subject project because the site is not included in the Westphalia Sector Development site. At this presentation, Shipley & Horne, P.A. was reminded of their responsibility to reach out to the communities and present their plans to the existing Twin Knolls and Melwood Estates communities as well as the MRCA members.

Based on the record, the Applicant, and counsel for the Applicant, complied with all notice requirements required by law. The record reflects that after required notice to affected property owners, neither Twin Knolls, Melwood Estates communities nor the MRCA members requested to become persons of record or participated in the proceedings before the Planning Board. There is nothing in the record to suggest that the Applicant did not comply with its responsibilities to reach out to the surrounding community regarding its plans for the subject property. *See* PGCPB No. 16-142, (12/1/2016, Tr.).

5. Melwood Road is a historic road that connects two historic sites; Melwood Park and Blythewood. The mast plan has a gradual transition of cul-de-sac, that will allow only one way for residential vehicles to ingress and egress Melwood Road, and historic trail with tree lined sidewalks and bicycle path with 30ft plus wooded buffers purposely intended to reduce noise and vehicle traffic. The Recovery Centers of America's residential, inpatient program and daily outpatient counseling services, will increase traffic.

MRCA points to no evidence in the record that the subject project will increase traffic in the area. To the contrary, there is substantial evidence in the record that Planning Board assessed the traffic impact of the subject project. The Board found that CSP-15003 will provide adequate on-site circulation and that the Level of Service at the project's intersections was deemed acceptable. Moreover, the Board approved CSP-15003 subject to certain transportation conditions to limit the impact of traffic on the surrounding area. *See* PGCPB No. 16-142, pp. 15-19), (12/1/2016, Tr.).

6. The Center should have safe access to their site without disturbing the community. It has been our experience with a similar Behavior Modification business, at this site, that Emergency Services are frequently called to the facility. Perhaps this plan could include another road, on the North side of the site that does not connect to Melwood Road. The Center could primarily use the new road for their daily client ingress and egress minimizing the use of Melwood Road and having two ways for Emergency Services to access the site.

Planning Board reviewed CSP-15003 for public facility adequacy and found that the development will have no impact on existing adequate public facilities. MRCA points to no evidence in the record that the subject project does not have safe access. To the contrary, there is substantial evidence in the record that Planning Board assessed the traffic impact of the subject project. The Board found that CSP-15003 will provide adequate on-site circulation and that the Level of Service at the project's intersections was deemed acceptable. Moreover, the Board approved CSP-15003 subject to certain transportation conditions to limit the impact of traffic on the surrounding area. *See* PGCPB No. 16-142, pp. 15–19), (12/1/2016, Tr.).

7. We would like to have the opportunity to meet with the Recovery Centers of America decision makers, to express our concerns regarding the impact that the facility will have on our community; in hopes of stopping this development or influencing the plan in such a way to minimize impact. The Recovery Centers of America should make an effort to build strong, trustworthy relationships and assimilate to the surrounding community. We have a quiet, peaceful, gentrified, community life style. We want minimal impact on our peaceful lifestyle. We will not sacrifice the quality of life of our established Melwood Road communities.

According to the Applicant, its team has met with and/or spoken with MRCA's representative approximately 12 times. MRCA will have more opportunities to meet with the Applicant or participate in the development of this project. The subject project requires approval of a Detailed Site Plan, which MRCA may elect to participate and register any concerns it may have about the project. *See* PGCC § 27-270.

The District Council finds that the Applicant's request to dismiss the appeal filed by MRCA has merit because MRCA did not appear at the hearing before the Planning Board, depriving the Board of any opportunity to consider MRCA's opposition to the project. Alternatively, even if MRCA did appear at the hearing before the Planning Board, the District Council concludes, based on the findings above, that MRCA's appeal of the Planning Board's decision has no merit because the Board's decision was supported by substantial evidence in the record and its decision was not premised upon an erroneous conclusion of law.

Finding no basis to reverse Planning Board's decision, the District Council hereby adopts the findings and conclusions set forth by the Board in PGCPB No. 16-142. Approval of CSP-15003 and Type 1 Tree Conservation Plan (TCP1-006-16), is subject to the following conditions:

1. Prior to certificate approval of the conceptual site plan (CSP), the following revisions shall be made to the plans and additional specified material be submitted:
 - a. The plans shall be revised so as to consistently refer to the square footage of the proposed building as 72,783 square feet.
 - b. The applicant shall indicate public transportation routes to the proposed facility, if any exist in the vicinity of the subject project.
 - c. The type 1 tree conservation plan shall be revised as follows:
 - (1) Revise the labeling located over the "woodland areas-not counted" to an easier and visibly discerning label wording.
 - (2) Remove Specimen Tree 35 (ST-35) from the specimen tree chart.
 - (3) Have the revised plan signed and dated by the qualified professional who prepared it.
2. Prior to approval of a DSP for the project, the following shall be ensured:
 - a. Those areas of the development which are to be used for pedestrian activities or as gathering places for people, adequate attention has been paid to human scale, high-quality urban design, and other

amenities, such as the types and textures of materials, landscaping and screening, street furniture, and lighting (natural and artificial).

- b. Total development within the subject property shall be limited to uses which generate no more than 35 AM peak hour trips and 43 PM peak hour trips. These rates were determined by using the Institute of Transportation Engineer's (ITE) *Trip Generation Manual, 9th Edition*. Any development generating an impact greater than that identified herein above shall require a new determination of the adequacy of transportation facilities.
 - c. The light emitting diode (LED) lighting shall be specified as yellow-tinted.
 - d. Consideration shall be given to the inclusion of a community garden in the subject project for the residents of the facility.
 - e. During the grading/construction phases of the project, the applicant intends to conform to dust control requirements as specified in *2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control* and the construction noise control requirements as specified in the Code of Maryland Regulations.
 - f. High standards shall be utilized to evaluate the architecture. Specifically, the proposed facility shall incorporate a substantial amount of masonry materials (i.e. brick, stone, and/or hardiplank) and utilize a variety of architectural features as part of the building elevations. The proposed facility shall not incorporate more than twenty (20) percent hardiplank if this material is utilized.
3. Prior to approval of the preliminary plan of subdivision, Phase I (Identification) archeological investigations, according to the Planning Board's *Guidelines for Archeological Review* (May 2005), are required on the above-referenced property to determine if any cultural resources are present. Evidence of M-NCPPC concurrence with the final Phase I report and recommendations is required prior to signature approval of the preliminary plan.
- Upon receipt of the report by the Planning Department, if it is determined that potentially significant archeological resources exist in the project area, prior to Planning Board approval of the final plat, the applicant shall provide a plan for:
- a. Evaluating the resource at the Phase II level, or
 - b. Avoiding and preserving the resource in place.
 - c. If a Phase II and/or Phase III archeological evaluation or mitigation is necessary, the applicant shall provide a final report detailing the

Phase II and/or Phase III investigations and ensure that all artifacts are curated in a proper manner, prior to any ground disturbance or the approval of any grading permits.

4. Prior to the approval of the final/record plat:
 - a. The applicant and the applicant's heirs, successors, and/or assignees, shall provide a plan for any interpretive signage to be erected (based on the findings of the Phase I and Phase II archeological investigations). The location and wording of the signage shall be subject to approval by the M-NCPPC staff archeologist, as designee of the Planning Board. The plan shall include the timing for the installation of the signage.
 - b. The applicant shall dedicate 30 feet of right-of-way from the center line of Melwood Road.
 - c. The applicant shall dedicate right-of-way for the proposed C-636 as depicted on the conceptual site plan.
 - d. The following note shall be placed on the final plat of subdivision:

“This development is subject to restrictions shown on the approved Type 1 Tree Conservation Plan (TCP1-00616), or as modified by the Type 2 Tree Conservation Plan, and precludes any disturbance or installation of any structure within specific areas. Failure to comply will mean a violation of an approved Tree Conservation Plan and will make the owner subject to mitigation under the Woodland and Wildlife Habitat Conservation Ordinance. This property is subject to the notification provisions of CB-60-2005. Copies of all approved Tree Conservation Plans for the subject property are available in the offices of the Maryland-National Capital Park and Planning Commission, Prince George's County Planning Department.”
 - e. A conservation easement shall be described by bearings and distances. The conservation easement shall contain the delineated primary management area except for any approved impacts and shall be reviewed by the Environmental Planning Section, as designee of the Planning Board, prior to approval of the final plat. The following note shall be placed on the plat:

“Conservation easements described on this plat are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPPC

Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed.”

5. Prior to the demolition of the main structure on the property, constructed as the German Orphan Home of Washington, DC in 1965, the building shall be documented through the completion of a Maryland Inventory of Historic Property (MIHP) form according to Maryland Historical Trust (MHT) standards by a qualified 36CFR60 consultant. The draft and final MIHP form shall be reviewed and approved by the Historic Preservation Commission prior to submittal by the applicant to MHT.
6. Prior to certification of the DSP, and prior to certificate approval of the TCP2 for this property:
 - a. Pursuant to Section 25-122(d)(1)(B), all woodland preserved, planted, or regenerated on-site shall be placed in a woodland conservation easement recorded in land records and the liber/folio of the easement shall be indicated on the TCP2. The following note shall be placed on the TCP2:

“Woodlands preserved, planted, or regenerated in fulfillment of woodland conservation requirements on-site have been placed in a woodland and wildlife habitat conservation easement recorded in the Prince George’s County Land Records at Liber_____ Folio_____. Revisions to this TCP2 may require a revision to the recorded easement.”
 - b. Development shown on the DSP and Type 2 Tree Conservation Plan shall be in conformance with an approved Type 1 Tree Conservation Plan (TCP1-006-16).
7. Prior to the issuance of any permits which impact wetlands, wetland buffers, streams or Waters of the U.S., the applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.

Ordered this 10th day of April, 2017, by the following vote:

In Favor: Council Members Davis, Harrison, Lehman, Patterson, Taveras, and Turner.

Opposed:

Abstained:

Absent: Council Members Franklin, Glaros, and Toles.

Vote: 6-0

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE GEORGE'S
COUNTY, MARYLAND

By: _____
Derrick Leon Davis, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council