

**MEMORANDUM**

**DATE:** June 3, 2005  
**TO:** Montgomery County Board of Appeals  
**FROM:** Carlton W. Gilbert, Zoning Supervisor  
Development Review Division (301-495-4576)  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
**REVIEW TYPE:** Special Exception  
**APPLYING FOR:** Group Home (Large)  
**APPLICANT:** Sunita Kayastha and Himalay Elderly Care II, Inc.  
**CASE NUMBER:** S-2628  
**REVIEW BASIS:** Chapter 59, Zoning Ordinance; Advisory to the Board of Appeals  
**ZONE:** RE-2  
**LOCATION:** 17234 New Hampshire Avenue  
Silver Spring, MD  
**MASTER PLAN:** Sandy Spring / Ashton Master Plan, 1998  
**FILING DATE:** October 25, 2004  
**PUBLIC HEARING:** June 13, 2005

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**STAFF RECOMMENDATION: APPROVAL with the following conditions:**

1. The applicant is bound by all submitted exhibits and verbal representations to staff, to the extent such exhibits and verbal representations are identified in this staff report recommending the granting of the special exception.
2. The use is for a large group home and is limited to no more than 16 elderly residents. Up to 3 non-resident staff are permitted on the largest shift.
3. The applicant must possess, not later than the issuance date of the use and occupancy certificate, any and all valid State of Maryland and county licenses, certificates, or registrations that may be required for a large group home.
4. The existing driveway shall remain as shown on the site development plan and the recommendation for approval is contingent on the grant of setback and screening waivers by the Board of Appeals as per Sections 59-E-2.83(b) and 59-E-2.83(c) of the Zoning Ordinance.

## **PROJECT SUMMARY**

The applicants, Sunita Kayastha and Himalay Elderly Care II, are requesting a special exception to operate a large group home for elderly residents at 17234 New Hampshire Avenue in Silver Spring. The property is Parcel P250 of the Ednor Farms Subdivision, and is located in the RE-2 zoning classification. The existing house has been used as a small group home for elderly residents since 1987. In 2003, the applicants purchased the house and continued the group home operation. A small group is permitted in the RE-2 zone by-right; a group home for more than 8 residents (up to 16 residents) requires a special exception. The applicants are requesting that the special exception be granted for 16 residents.

### **Neighborhood Description**

The subject property is part of the Ednor Farms subdivision in Silver Spring. The property is located west of New Hampshire Road, north of Ednor Road, east of Woodale Road and south of Avenleigh Drive. Properties adjacent to the subject property include Ashton Methodist Church and three single-family homes located off a common driveway shared by the applicant. The surrounding, well-established neighborhood is primarily single-family detached homes that front on Cliftonbrook Lane.

### **Site Description**

The subject property is approximately 6 acres. It is an interior lot on the west side of New Hampshire Avenue. The lot is setback approximately 1,100 feet from New Hampshire Avenue. The existing group home is not visible from New Hampshire Avenue. The group home is accessed by a 16-foot wide private right-of-way that serves as a common ingress and egress driveway for the Ashton Methodist Church to the north and three-single-family dwellings to the south. The dwelling (group home) is one-story and contains approximately 6,000 square feet of interior space. The dwelling is setback 169 feet from its front property line, 136 feet from its left side property line and 194 feet from the right side lot line. The rear yard of the lot is approximately 582 feet in depth and is developed with mature trees and shrubbery. The property is well landscaped with a wide array of mature trees in addition to various shrubs and flowers. The existing graveled parking lot in front of the dwelling can accommodate 10 cars in 9' x18' parking spaces. The mature trees in the front yard provide shade for the existing parking lot.

### **Elements of the Proposal**

The applicants are seeking an increase in occupancy for the existing group home from 8 residents to 16. The existing group home has been in operation for 18 years. All of the residents are elderly, in their 80s and 90s, and will typically need assistance with the tasks of every day living (e.g., bathing, dressing and meal preparation) and would not drive. In preparing the home to accommodate 16 residents, two walkout basement level rooms were converted to bedrooms that accommodate two persons each; 3 upstairs

double bedrooms are equipped for double occupancy and 6 upstairs bedrooms are equipped for single occupancy. There were no structural changes made to the exterior of the home. The day staff will consist of three people who will do the residents' care, cooking and housekeeping for the residents. Both evening and night shifts will be staffed with two employees at all times. Staff will be employed seven days a week. Staff schedules will be staggered as follows:

- 2 staff members- 9:00 a.m. to 6:00 p.m.
- 3 staff members- 10:00 a.m. to 6:00 p.m.
- 2 staff members- 6:00 p.m. to 11:00 p.m.
- 2 staff members- 11:00 p.m. to 9:00 a.m.

Daily Activities: The daily activities of each resident will be framed by the Resident Service Plan. Each resident will be initially assessed and periodically reassessed for interests and abilities. The daily activities will be in keeping with their abilities and independence. Both indoor and outdoor activities will be available for the residents.

Deliveries: Food deliveries will be made via private car or minivan from local grocery store on a weekly basis by staff or management. Medicine will be delivered once a month by a local pharmacy. An oil truck will make deliveries approximately once every six weeks.

Adult Day Care: Transportation services will make two trips per weekday to transport those residents who attend an adult day care facility.

Visitors: Visits from families and friends will be made at various times throughout the day, usually at non-peak traffic hours, and often on weekends. On Sundays, some of the residents will be picked up by relatives and/or friends to attend religious services. An Activity Director will visit the facility every six weeks; and a podiatrist will visit as needed. Also, home care services (e.g., physical therapist, occupational therapist, registered nurse, social worker, etc.) will be provided as ordered by the resident's doctor.

## Analysis

Master Plan- Staff recommends in favor of this special exception application. This Special Exception Application for a "Large Group Home", for the elderly, lies within the Approved and Adopted Sandy Spring/Ashton Master Plan, dated 1998. The existing house, which is the subject of this application, is not visible from New Hampshire Avenue and is reached by a long gravel driveway.

The Master Plan recommends the following for this part of the "New Hampshire Avenue Analysis Area": "This Plan proposes a rural character concept as shown in Figure 18 (Page 44), that both maintains the existing rural character and re-creates it along the

road." Figure 18 indicate "Maintain existing rural character" in the area of this Special Exception. Since this Special Exception Application is in a house that pre-dated the Master Plan, staff believes it is consistent with the recommendations contained in the Sandy Spring/Ashton Master Plan.

Staff believes that the use is compatible with the surrounding community (it existed before most of the community was built) and will help to meet a need for elderly housing in Montgomery County.

### **Transportation**

Transportation Planning staff recommends no transportation-related conditions should this special exception case be granted for the proposed group home as the petition meets the transportation-related requirements of the APF test. Staff finds that the proposed use will not have an adverse effect on the transportation network within the immediate local area. (See Attached Transportation Planning Memo)

### **Landscaping and Lighting**

The site plan demonstrates that lighting levels is less than 0.1 foot candle at the property lines. The lighting plan indicates "acorn" fixtures and ground lighting that is typical of residential settings. The lighting is directed towards the building to prevent off-site glare. The six-acre lot includes several mature trees and shrubbery. There are tree save areas noted on the site plan along the eastern, western, and northern boundaries of the site.

### **Environment**

Staff has no comments on the proposed special exception. There is no land disturbance proposed and no changes to existing structures, trees, or landscaping. The application is exempt from the forest conservation law requirements (forest conservation exemption no. 4-05268E) under Section 22A-59q)(1) of the Forest Conservation Law (a special exception application for an existing structure and the proposed use will not result in clearing of existing forests or trees).

### **Parking**

The parking requirement for a group home is one space for every two residents plus one space for every two employees on the largest work shift. Based on this criteria, a total of 10 off-street parking spaces would be required for this group home special exception: 8 spaces for the proposed 16 residents plus 2 spaces for the employees since three employees will be on the largest work shift. Currently, there are 10 off-street parking spaces.

The applicant is requesting a waiver from the following requirements:

Section 59-E-2.83(c) of the Zoning Ordinance requires screening between the parking facility (including driveways) and the adjacent lots. The regulations call for a 6-foot high screening fence or evergreens. The 10 parking spaces are close to the facility which is near the center of the wider portion of the 6-acre property. The parking lot is approximately 190 feet from the right side line, 200 feet from the left side lot and 640 feet from the rear lot line. Both side lot lines are buffered with existing mature trees, negating visibility of the parking area. The applicant believes that with such large distance there is no need for additional screening. The applicant also believes that screening both sides of the approximately 1,100-foot driveway that has existed for years would be an undue financial hardship.

Section 59-E-2.83(b) of the Zoning Ordinance requires the doubling of side yard setbacks for parking lots and driveways associated with a special exception in residential zones. This provides for a substantial setback from adjoining properties. A waiver of a setback for the existing driveway is necessary. The applicant will need to include a setback waiver as part of his request to the Board of Appeals.

### Development Standards

The special exception will meet the relevant development standards applicable to the RE-2 zone and special exception use. The following table summarizes these standards.

<i>Development Standard</i>	<i>Required</i>	<i>Provided</i>
Minimum Lot Area (square feet)	2 acres	6 acres
Minimum lot width (feet) at front building line for 1-family detached dwelling	150 feet	430 feet
Minimum street setback (feet)	50 feet	Apprx. 900 feet
Minimum Setback from adjoining lot (feet)		
--One side	17	136.5
--Sum of both sides	35	330.97

--Rear	35	581.58
Required Parking	10	10

**ADDITIONAL REVIEW REQUIREMENTS**

In the event of any new buildings or increase in building square footage, conformance under Chapter 50 will be required prior to the issuance of any building permit.

**Community Concerns**

Staff has received a telephone call from an adjoining neighbor who resides on Cliftonbrook Lane. The neighbor has voiced his concerns about the sign that is posted notifying the neighborhood of the proposed group home.

**SPECIAL EXCEPTION CRITERIA**

**Section 59-G-2.26 Group home, large**

(a) When allowed. In addition to the general conditions required in division 59-G-1, a group home may be allowed upon a finding by the Board of Appeals:

(1) That any property to be used for a group home is of sufficient size to accommodate the proposed number of residents and staff.

*The six-acre property consists of an existing dwelling that has approximately 6,000 square feet of floor space. Based on floor plans submitted by the applicant, the group home contains eleven bedrooms and six bathrooms. The sizes of the bedrooms will enable 2 double bedrooms in the basement level and three double bedrooms and six single bedrooms on the first floor level; thus providing sufficient size to accommodate for 16 elderly residents. While there is 24-hour staff coverage, none of the staff live at the facility. Thus no bedroom is needed for staff.*

(2) That the site to be used as a large group home for children provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children to be cared for.

*This provision is not applicable, since the group home is for elderly residents.*

- (3) That the street parking must be provided in the amount of one parking space for every 2 residents and one space for every two employees on the largest work shift. The Board may decrease the off-street parking where the method of operation or clientele indicates the decrease is warranted.

*According to the applicant, none of the current elderly residents operate motor vehicles and it is anticipated that future residents will not drive either. The property consists of six-acres with ample space for off-street parking. With a maximum of 16 residents and 3 employees on the largest work shift, this provision requires 10 spaces for off-street parking. As shown on the site plan, there are 10 spaces designated for off-street parking.*

- (b) Decision to be expedited. In order to expedite a decision regarding a proposed group residential facility, the Board must give priority consideration in scheduling a public hearing and in deciding petitions for such a facility.

*Not applicable. The applicant did not request that this case be expedited.*

### **Section 59-G-1.2 Conditions for granting.**

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 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 inherent adverse effect associated with a large group home is the use of a single-family dwelling by up to 16 residents plus staff. In this case, the applicant has requested approval for a group home of 16 residents, plus 3 caretakers. The interior of the existing dwelling has been modified to accommodate 16 occupants without adding any additional square feet to the home. Staff finds that the size, mass, and setbacks are compatible with existing adjacent development. Staff finds that there are no non-

inherent characteristics that warrant a recommendation of denial. Staff finds that all of the physical and operational characteristics of the proposed use will be compatible with existing development.

## Montgomery County Zoning Ordinance

### 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 proposed group home use is allowed by special exception in the 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.

*Staff finds that the requested use meets the standards and requirements prescribed in Sections 59-G-1.21 and 59-G-2.00 of the Zoning Ordinance. The proposal does comply with the requirements for the Large Group Home use.*

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a 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 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 use has been found to be consistent with the recommendations of the Sandy Spring / Ashton Master Plan.*

(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 use of the single-family home as a large group home will be in harmony with the general character of the surrounding residential neighborhood considering the design, scale, and bulk of the structure. The exterior of the dwelling will remain the same, there are no additions, and it will continue to have the appearance of a single-family home.*

- (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.

*Staff finds the use will not have a detrimental effect for any of these reasons and will remain residential in use and in character*

- (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 use is residential in nature and will not cause any objectionable activity at the subject site. Problems with illumination and glare are not anticipated.*

- (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.

*Staff concludes that since there will be little increase in activity with the additional elderly residents, and since the existing appearance of the house will remain the same, the special exception will not adversely impact the residential nature of the neighborhood. Staff research of special exception cases in this area did not indicate that there are any other group homes in the immediate 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 of any adverse effects the use might have if established elsewhere in the zone.

*The use will not have adversely affect the safety of area residents.*

- (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 use is adequately served with public services and roads.*

- (i) If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

*Not applicable.*

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.

*Staff finds that the subject use should not reduce the safety of vehicular or pedestrian traffic.*

## LIST OF ATTACHMENTS

1. Location Map
2. Neighborhood Map
3. Certified Zoning Map
4. Floor Plans
5. Site Plan
6. Pictures
7. Parking Waiver Request
8. Transportation Planning Memo
9. Environmental Planning Memo