

1 **MILLERSVILLE BOROUGH ZONING HEARING BOARD**  
2 **LANCASTER COUNTY, PENNSYLVANIA**  
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4  
5 IN RE:

6 **Student Lodging, LLC,**  
7 *Applicant*

:  
: **Case No. 22-01**  
: Properties:  
: 104 N. Duke Street  
: Prince Street  
: 102 N. Duke Street  
: 66 N. Duke Street  
: 62 N. Duke Street  
: 135 W. Frederick Street  
: 123 W. Frederick Street

14  
15 **DECISION**  
16

17 1. The **Millersville Borough Zoning Hearing Board** (herein also “**Board**”), by a  
18 unanimous decision, hereby **GRANTS** to the Applicant and owner of the Properties, namely  
19 **Student Lodging, Inc.** (herein also “**Applicant**” or “**Owner**”), a **special exception** pursuant to the  
20 Millersville Borough Zoning Ordinance (herein also “**ZO**”) §380.27 and §380-34.A(34) in order to  
21 allow the Applicant and Owner to construct and maintain on the Properties a retirement community  
22 with up to 69 residences, a private meeting building, private roads, and other related structures and  
23 improvements shown and further described in the plans attached to the Applicant’s application  
24 regarding the following Properties located in an R-1 Residential Zoning District: **104 N. Duke**  
25 **Street** (UPI #440-05555-0-0000); **Prince Street** (UPI #440-58449-0-0000); **102 N. Duke Street**  
26 (UPI #440-71249-0-0000); **66 N. Duke Street** (UPI #440-83231-0-0000); **62 N. Duke Street** (UPI  
27 #440-85957-0-0000); **135 W. Frederick Street** (UPI #440-71923-0-0000); **123 W. Frederick**  
28 **Street** (UPI #440-89825-0-0000) (collectively herein also “**Properties**”).  
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30 2. This Decision is subject to, and the Applicant and Owner shall comply with, the  
31 following **general conditions**:  
32

- 33 A. Except as modified by this Decision, in which case the Applicant and Owner  
34 shall comply with this Decision, the Applicant and Owner shall at all times  
35 comply with and adhere to the evidence presented to the Board (including,  
36 without limitation, the Applicant’s application, plans, exhibits, and witnesses’  
37 testimony) and also described in the Board’s Minutes for this case, all of  
38 which Minutes and documents are incorporated herein.  
39  
40 B. The Applicant and Owner shall obtain all approvals and permits that are  
41 required by applicable federal, state, and local law, ordinances, codes, rules,  
42 and regulations.  
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44 C. This Decision shall be binding upon the Applicant and Owner, and their  
45 respective successors, heirs, and assigns.  
46  
47 D. Any violation of this Decision or conditions described herein also shall be  
48 considered a violation of the ZO and shall be subject to the penalties and

49 remedies contained therein, in Pennsylvania's *Municipalities Planning Code*,  
50 or both (whichever is applicable).

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52 3. If this Decision is appealed, the Board reserves the right to subsequently amend or  
53 supplement this Decision, findings of fact, and conclusions of law that were drafted and adopted  
54 without reviewing the official transcript of the hearing in order to minimize the costs and expenses  
55 for all concerned persons.

## 56 57 **FINDINGS OF FACT & CONCLUSIONS OF LAW**

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59 4. The Applicant intends to construct and maintain on the Properties a retirement  
60 community consisting of no more than 69 residences, along with a private meeting building, private  
61 roads, and other related structures and improvements.

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63 5. The Properties are all located within an R-1 Residential Zoning District and  
64 eventually will be combined into one property.

65  
66 6. Occupation of residences in the retirement community shall be limited to those  
67 individuals who are at least 55 years old, certain surviving spouses, and certain disabled persons as  
68 described in the Application. No portion of a unit may be leased or licensed to any individual less  
69 than 55 years of age.

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71 7. The facts in the "Zoning Application Narrative" (herein also "Narrative") that was  
72 attached to the Application are hereby accepted as facts for this Decision and are incorporated herein  
73 as facts, with the one exception that the number residences to be built was reduced at the hearing  
74 from 72 to 69.

75  
76 8. A special exception is not an exception to a zoning ordinance, but is a use that is  
77 permitted unless, under the circumstances, such use would adversely affect the community. *E.g.*,  
78 *Appeal of Lynch Community Homes, Inc.*, 554 A.2d 155 (Pa. Commw. 1989); *Johnson v. North*  
79 *Strabane Twp.*, 546 A.2d 1334 (Pa. Commw. 1988); *Heck v. Zoning Hrg. Bd. for Harvey's Lake*  
80 *Borough*, 397 A.2d 15 (Pa. Commw. 1979).

81  
82 9. The applicant for a special exception has the burden to demonstrate that the proposed  
83 use satisfies the objective requirements of the zoning ordinance, and once such applicant has met his  
84 or her burden, a presumption arises that the proposed use is consistent with the health, safety, and  
85 general welfare of the community; the burden then shifts to objectors to demonstrate that the  
86 proposed use will have a detrimental effect on the health, safety, and general welfare of the  
87 community. *E.g.*, *Morrell v. Zoning Hrg. Bd. of Shrewsbury*, 17 A.3d 972 (Pa. Commw 2011);  
88 *Greaton Properties, Inc. v. Lower Merion Twp.*, 796 A.2d 1038, 1045 (Pa. Commw. 2002).

89  
90 10. Special exception objectors must raise specific issues, and show a high probability  
91 that the use will generate adverse impacts not normally generated by a retirement community and  
92 that these adverse impacts will pose a substantial threat to the health and safety of the community.  
93 *E.g.*, *Sunnyside Up Corp. v. City of Lancaster Zoning Hrg. Bd.*, 739 A.2d 644 (Pa. Commw. 1999);  
94 *Manor Healthcare Corp. v. Lower Moreland Twp. Zoning Hrg. Bd.*, 590 A.2d 65 (Pa. Comm. 1991);  
95 *Shenk v. Board of Supervisors of East Hempfield Twp.*, 83 Lanc. L. Rev. 84 (Pa. C.P. Lancaster  
96 County 2007).

98 11. Per ZO §380-27, a retirement community in an R-1 Residential Zoning District is a  
99 use permitted by special exception if the use meets the specific requirements of ZO §380-34.A(34).  
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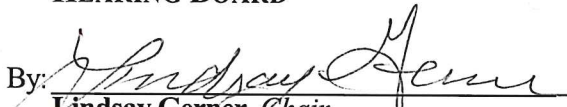
101 12. ZO §380-17.C describes the general requirements for all special exception requests.  
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103 13. The testimony and evidence of the Applicant's witnesses at the hearing, together with  
104 the "Analysis" section of the Narrative filed with the Applicant's Application, are incorporated  
105 herein and adequately describe how the proposed use meets all of the foregoing applicable ZO  
106 requirements for the requested special exception. Thus, a presumption arose that the proposed use  
107 is consistent with the health, safety, and general welfare of the community, and the burden then  
108 shifted to the objectors to demonstrate that the proposed use will have a detrimental effect on the  
109 health, safety, and general welfare of the community.  
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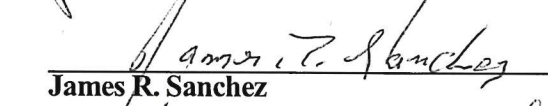
111 14. While many objectors at the hearing voiced reasonable concerns, their testimony  
112 unfortunately was either speculative or concerned non-zoning issues over which the Board had no  
113 jurisdiction (for example, land development issues that are governed by Millersville Borough's  
114 Subdivision and Land Development Ordinance), or both. Thus, the objectors did not meet their  
115 above-described burden, because they failed to raise specific issues (1) that showed a high  
116 probability that the proposed use will generate adverse impacts not normally generated by a  
117 retirement community and (2) that any such adverse impacts would pose a substantial threat to the  
118 health and safety of the community, particularly since such were speculative at best or concerned  
119 non-zoning issues. *See, e.g., Sunnyside Up Corp. v. City of Lancaster Zoning Hrg. Bd., supra.*  
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121 15. For the foregoing reasons, the Board was required to grant the requested special  
122 exception, and the Board recommended to the objectors at the hearing that they should monitor this  
123 case through the entire land development process and raise their objections at the appropriate review  
124 meetings and hearings during that process.  
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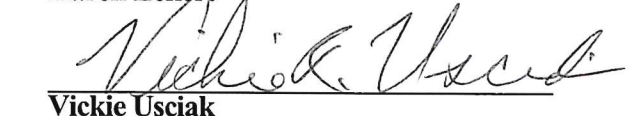
126 **MILLERSVILLE BOROUGH ZONING**  
127 **HEARING BOARD**

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130 By:   
131 **Lindsay Gerner, Chair**

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134   
135 **James A Kirk Jr., Vice Chair**

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138   
139 **James R. Sanchez**

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141  
142   
143 **Karen Eckert**

144  
145  
146   
147 **Vickie Usciak**

148 Dated and filed July 29, 2022 after public notice and hearing duly held on June 23, 2022.  
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## APPEALS DEADLINE

**ALL APPEALS OF THIS DECISION MUST BE FILED WITH THE LANCASTER COUNTY COURT OF COMMON PLEAS, LANCASTER COUNTY, PENNSYLVANIA, WITHIN THIRTY (30) DAYS OF THE DATE OF SERVICE OF THIS DECISION.**

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## PROOF OF SERVICE

The undersigned hereby certifies that the **Date of Service of this Decision** is July 29, 2022, and it was served upon the persons at their respective addresses and in the manners as follows [*applicable boxes* are checked]:

### PERSONS SERVED:

### METHOD OF SERVICE:

#### Applicant:

**Student Lodging, Inc.**  
ATTN: Geoffrey Beers  
21 S. George Street  
Millersville, PA 17551

- Hand delivery  
 Ordinary United States first class mail

#### Applicant's Attorney:

**Stacy Morgan, Esquire**  
Brubaker Connaughton Goss & Lucarelli LLC  
480 New Holland Avenue, Suite 6205  
Lancaster, PA 17602

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 Ordinary United States first class mail

#### Parties:

**James Frantz**  
123 N. Prince St.  
Millersville, PA 17551

- Hand delivery  
 Ordinary United States first class mail

**Richard Frantz**  
55 N. Duke St.  
Millersville, PA 17551

- Hand delivery  
 Ordinary United States first class mail

**Jodell M. Rankin**  
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Millersville, PA 17551

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**Jennifer & Lee Seabolt**  
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Millersville, PA 17551

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**Paul & Karen Sirbak**  
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- Hand delivery  
 Ordinary United States first class mail

### MILLERSVILLE BOROUGH ZONING HEARING BOARD

By:   
Sue McCullough, Millersville Boró. Admin. Scy.