

Deep Run Property Management,
LLC & Horse Farm, LLC,

Petitioners

BEFORE THE ZONING BOARD OF
HOWARD COUNTY, MARYLAND

ZB Case No. 1076M

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DECISION AND ORDER

On June 17, 2009 the Zoning Board of Howard County, Maryland, considered the petition of Deep Run Property Management, LLC & Horse Farm, LLC to amend the Zoning Map of Howard County so as to reclassify from the R-20-MXD-3 (Residential-Single-Mixed Use Overlay) to the PSC (Planned Senior Community) Zoning District, with a Preliminary Development Plan for an age-restricted adult housing development, 20.5 acres of land located on the west side of Old Montgomery Road, northwest of the Brightfield Road intersection, Tax Map 37, Grid 2, Parcels 748, 753, in the First Election District of Howard County.

The notice of the hearing was advertised, the subject property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising and mailing to adjoining property owners which were entered into the record. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning and the Planning Board's recommendation, were entered or incorporated into the record of the hearing. Both the Department of Planning and Zoning and the Planning Board recommended approval of the petition if Petitioner successfully addressed several issues, which will be addressed below.

The Petitioner was represented by Ronald Schimel, Esquire. Mr. Michael Nieberding appeared at the hearing in opposition to the petition.

After careful evaluation of all the information presented, the Zoning Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioner proposes rezoning of the 20.5 acre R-20-MXD-3-zoned subject property to the PSC Zoning District. Because the PSC Zoning District is a floating zone, the Petitioner presented testimony and evidence relating to the criteria in Section 127.1H. of the Howard County Zoning Regulations rather than to the change-mistake rule applicable to Euclidean rezoning cases. Mr. Tim Madden, a landscape architect and planner, testified on many of the details of the petition, including planning issues. Mr. Mark Keeley, a traffic consultant, testified on traffic issues. Mr. Howard Resneck, a principal in Horse Farm, LLC also testified as to the reason for the request. The information provided and discussed below is based on these witnesses' testimony or the Department of Planning and Zoning's Technical Staff Report, which the Board accepts and adopts as its own.

2. The Petitioner proposes, on its Preliminary Development Plan ("PDP"), the intended use of the subject property to be an age-restricted adult housing development, called "Trotter's Knoll", comprised of 64 apartment units and 52 single-family attached units, for a total of 116 dwelling units. The PDP is depicted on Petitioner's Exhibit 1, a multi-page booklet, which addresses various elements/criteria of the PDP. The maximum number of dwelling units which could be permitted on the subject property's 16.7 net acres (at a density of 8 dwelling units per acre allowed in the PSC District) would be 133 but Petitioners propose only 116 dwelling units.

3. The subject property is an irregularly shaped parcel, very narrow, with environmentally sensitive areas located in the "panhandle" located in the northwestern part of the site. These conditions have resulted in Petitioners' proposed linear design, with development

located on each side of a central proposed private road named Wendy Way. This private access road enters the subject property at a point on Old Montgomery Road, a major collector road, west of and across from Brightfield Road. There is a proposed second emergency access point shown onto Old Montgomery Road to replace the originally proposed secondary emergency access to Fetlock Court, as shown on Supplemental Appendix F to Exhibit 1. This access would only be used in emergencies, and is to be constructed with stabilized turf or gravel with a gated/demarcated entrance. The Fetlock Court access was deemed to be problematic for several reasons including its proposed width, the difficulty in buffering it, and the possible restrictions it would cause on Fetlock Court parking.

4. On the PDP Petitioners propose the location of the Community Center near the entrance of the development on the west side of proposed Wendy Way. All of the 5 apartment buildings are also proposed to be located on the southwest side of this private road, while all but one of the 11 single-family attached buildings are proposed to be located on the northeast side of Wendy Way. The various sizes of the single-family attached and apartment buildings are shown on the PDP and as described in the Technical Staff Report. All of the proposed dwelling units on the subject property are proposed to be for-sale condominium units. All of the single-family attached units will have full, in-ground basements with no rear walk-outs. In response to comments from DPZ, Petitioners acknowledged that requirements for setbacks from roads will make the construction of sun rooms for some of the single-family units not possible without variances.

Mr. Madden indicated that in proposing the design of the buildings for the proposed development, Petitioners took clues from the different housing types in the surrounding area. He also indicated that to ensure compatibility, Petitioners proposed the lower single-family attached

units to be located closest to the adjacent residential uses to the north and east, while the taller apartment buildings will be closer to the open undevelopable areas to the south and west, in effect providing a transition of uses. In addition, Petitioners have proposed substantial buffering between the development and the adjoining residential uses, in addition to retaining an existing fence within a hedgerow along the northeastern property line. Petitioners have also proposed providing additional buffering to be located on the adjoining residential properties, the installation and warranting of which would be provided by Petitioners, and the long-term maintenance of which would be the responsibility of the adjoining property owner.

5. Approximately 10 acres of open space are proposed on the PDP, which is about 50% of the total area of the subject property, considerably more than the minimum 35 percent open space required in the PSC Zoning District. The single most significant open space area is in the wooded, environmentally-sensitive area in the northwest portion of the subject property. The Petitioner also proposes a 7,200 square foot "Active Community Recreation Area" located between Apartment Building B and C, and a 3,380 square foot "Proposed Sitting Area" shown immediately north of the only three unit single-family attached building located on the southwest side of Wendy Way. In response to the comments from DPZ to provide greater specificity as to these proposed recreational areas, Petitioner presented to the Planning Board and the Zoning Board Supplemental Appendices D (Community Seating Area) and E (Community Recreation Area) which show a conceptual layout for both areas. These conceptual layouts show the proposed plans for the locations of plantings, benches for both areas and Bocce courts for the Community Recreational Area.

6. The Petitioner proposes a 3,650 square foot community center to be located as previously described.

7. The Petitioner proposes that all buildings in the proposed development will be constructed in accordance with the "Typical Active Adult Design Features", as shown in Section IV.A on page 5 of Exhibit 1.

8. Petitioners provided testimony that the proposed development would be constructed in 4 phases as shown on page 14 of Exhibit 1. Petitioners indicated that the Community Center and open space would be built/platted during Phase 1 of the project.

9. Petitioners indicated that the Petitioner would meet the requirement to provide 10 per cent of the 116 dwelling unit development, or 12 dwelling units, as Moderate Income Housing Units ("MIHU") by designating 12 MIHUs apartment units to be provided and disbursed throughout the proposed development.

10. Mr. Keeley, a traffic consultant/engineer, testified that the sight distance at the entrance of the subject property could be made adequate through clearing and grading or by redesigning the intersection if the County approved only a two way stop sign at the Old Montgomery Road/Brightfield intersection. Mr. Keeley indicated that the Petitioners were proposing a four way stop sign or a traffic light at this intersection, which the County would have to approve at the site development plan stage of development, and that either of these options would solve any sight distance issues at the intersection. Mr. Keeley and DPZ, in its Staff Report, both indicated that the additional traffic generated by the proposed development would not affect the safety of the traffic conditions on Old Montgomery Road due to the relatively low existing traffic volume on that road.

11. In Section VIII of Exhibit 1, Petitioners provided information as to the covenants/legal restrictions that will ensure that the proposed development remains an age-

restricted community, and information as to the legal entity that will ensure enforcement of those restrictions.

CONCLUSIONS OF LAW

1. The PSC Zoning District is a floating zone so that the change-mistake rule criterion for deciding whether a proposed rezoning is justified is inapplicable. The criteria for deciding whether a proposed rezoning is justified are contained in Section 127.1H.1 through 11 of the Howard County Zoning Regulations ("HCZR"). It is the petition's compliance with these criteria or standards for approval which will be applied as provided below in deciding the proposed rezoning. The Board finds that the Petitioner has met all of these standards of approval, thereby justifying the grant of PSC zoning as follows:

a. The proposed district will accomplish the purposes of the PSC District.

The purposes of the PSC District are detailed in Section 127.1.A of the HCZR. Those purposes include (1) to permit development that provides housing for those persons 55 or older that meets their diverse needs by providing independent living units within single-family or multi-family dwellings with the option of providing assisted living units or nursing care facilities; and (2) to ensure that the proposed development is compatible with residential neighborhoods through careful site planning.

The proposed rezoning to the PSC District for the subject property, based on the development of the subject property according to the proposed Preliminary Development Plan, will accomplish the purposes of the PSC District by providing single-attached and apartment dwelling units that are restricted to households with at least one member who is at least 55 years old or older residing there, together with numerous design features, amenities and services to meet the needs of seniors as supported by the Board's Findings of Fact 1 through 11 . The Board

finds that the proposed PSC development will be compatible with the nearby residential neighborhoods due to the site design and buffering proposed as part of the plan based on the Board's Finding of Fact 4 and Conclusion of Law 1.d.

b. The site meets the requirements of Section 127.1.B.

Section 127.1.B.1 through 8 of the HCZR contains specific objective requirements that have to be met. Each of those requirements and the Petitioner's compliance with those requirements are addressed as follows:

1. At the preliminary development plan stage and subsequent stages of plan processing and development, the site shall be served by both public water and sewer (Section 127.1.B.1 of the HCZR).

The Petitioner indicated that the subject property is in the Service Area for Public Water and Sewer. The Department of Planning and Zoning confirmed this in its Technical Staff Report. Therefore, the Board finds that the subject property will be served by both public water and sewer at this and the next stage of development.

2. The site has direct access to a collector or arterial road designated in the General Plan (Section 127.1.B.2 of the HCZR).

The subject property has direct access onto Old Montgomery Road, a major collector road on the Transportation Map 2000-2020 of the 2000 General Plan according to the Department of Planning and Zoning's Technical Staff Report.

3. The development shall contain at least 50 dwelling units (Section 127.1.B.3 of the HCZR).

The petition proposes development of approximately 116 dwelling units, considerably more than the minimum requirement of dwelling units based on the Board's Finding of Fact 2.

4. The development shall contain at least two of the following types of housing: single-family detached dwellings, single-family attached dwellings, apartments, assisted living facilities, and nursing homes. At least one of the housing types shall be independent single-family or multi-family dwellings (Section 127.1.B.4 of the HCZR).

The proposed development contains two types of housing -- single-family attached units (townhouses) and apartments, at least one of which is designed for independent living arrangements.

5. Open space shall constitute at least 35% of the gross acreage of the planned senior community (Section 127.1.B.5 of the HCZR).

The Petitioner proposes approximately 10 acres of open space as part of the development of the acre subject property, which is of its gross area, well exceeding the minimum 35% open space requirement based on the Board's Finding of Fact 5.

6. The community shall include recreation and common areas for residents, including at least pathways and seating areas (Section 127.1.B.6 of the HCZR).

The Petitioner proposes recreation and common areas for residents on the PDP, including a community center based on the Board's Finding of Fact 4, 5 and 6.

7. At least ten percent of the dwelling units shall be moderate income housing units.

The Petitioner proposes that 12 Moderate Income Housing Units (MIHUs) would be provided as part of the approval of the PSC rezoning and PDP which is at least 10% of the proposed 116 units based on the Board's Finding of Fact 9. The Petitioner indicated that the units would be provided within and disbursed throughout the apartment buildings.

8. At least one on-site community building or interior community space shall be provided that contains a minimum of:

- a. 20 square feet of floor area per dwelling unit for developments of less than 100 dwelling units, and
- b. 10 square feet of floor area per dwelling unit above 99.

The Petitioner proposes a 3,650 square foot community building which is in compliance with the community building required by this subsection based on the Board's Finding of Fact 6.

c. Safe public access is available to and from the site. This includes a determination that roads serving the proposed development have the capacity to handle the increased use which is likely to result from the volume and density of the proposed development as well as development on surrounding properties. The width, sight distance and general condition of surrounding roads shall be considered in making this finding.

This access point to the subject property via Old Montgomery Road will be safe due to the adequate sight distance at this access point which must be provided at the site development plan stage based on the Board's Findings of Fact 10.

The Board notes that the increase in traffic attributable to the proposed development will leave the area roads with acceptable levels of service in terms of safe road access based on the Board's Finding of Fact 10.

d. Proposed buildings are compatible with residential development in the vicinity based on scale and character of new buildings or through setbacks and landscaping.

The proposed residential development will be compatible with existing vicinal residential development based on the Board's Finding of Fact 4. The Board finds that the taller apartment buildings are located in the southwest part of the property further away from adjoining residential neighborhoods, and buffered by the development's proposed townhouses thus minimizing any effects and providing an appropriate transition to the adjacent single-family detached residential areas. Adequate buffering/landscaping is provided around the perimeter of the subject property. The architectural design of the proposed buildings is residential in character, in keeping with the surrounding residential community.

e. Sufficient area is set aside as open space to provide green area and recreational amenities for the residents and transition areas and buffering for adjacent neighborhoods.

There is more than adequate open space proposed on the PDP to provide green areas and recreational amenities for the future residents of the community as previously indicated in Finding of Fact 4, 5 and 6 and Conclusion of Law 1.b. 5 and 6. .

f. Suitable common areas and amenities are provided for residents, including pathways, seating areas, and an adequately sized community building or interior space.

As previously indicated in Findings of Fact 4, 5 and 6 and Conclusion of Law 1.b.5 and 6, there is a community building and recreation areas that provide suitable common areas and amenities for the future residents of the proposed community.

g. Business uses which are permitted as accessory uses will be sized for use solely by residents of the PSC District... [etc.]

There is no business use proposed as part of the plan, so this subsection is inapplicable.

h. For a development that will be built in phases, open space areas will be provided in each phase to meet the needs of the residents unless otherwise provided in an earlier phase.

As indicated in the Board's Finding of Fact 8, the proposed phasing plan for the development of the subject property in 4 phases will ensure that adequate open space is available in each phase to meet the needs of the residents.

i. The development and proposed dwellings are designed for older adults and incorporate universal design features. Exterior site improvements and individual dwellings will be accessible to and adaptable for residents with mobility and functional limitations.

As indicated in the Board's Finding of Fact 7, the development and proposed dwellings are designed for older adults and will meet and exceed the required universal design features.

j. The development will be subject to covenants or other legal restrictions enforcing the age restrictions required for this zoning district. The legal entity that will implement and maintain the age restrictions, as well as the open space and common facilities, is clearly identified. The legal entity shall be able to provide effective enforcement to supplement County enforcement of the Zoning Regulations.

As indicated in the Board's Finding of Fact 11, attached to the petition is a proposed Declaration of Restrictions which identifies the legal entity that will implement the enforcement of the required age-restrictive restrictions. If the rezoning is granted, these restrictions will be recorded as part of any development approval and will provide an effective enforcement entity

for those covenanted age restrictions. This same legal entity will also be required to maintain the community's open space and common facilities.

k. The location of the proposed site is in conformity with the General Plan.

The proposed residential development is in harmony with the Residential Area designation for the vicinity of the subject property on the 2000 General Plan.

In addition the location of a PSC zone and development on the subject property will help to achieve the goal of 2000 General Plan Policy 4.3 of providing an adequate supply of senior housing for that fast growing segment of Howard County's population.

2. The Board concludes that Petitioner has met all the standards for approval of the proposed rezoning to the PSC District pursuant to Section 127.1.H.1 through 11. of the Howard County Zoning Regulations, and further concludes that the proposed rezoning is appropriate to apply to the subject parcel based on Petitioner's proposed Development Plan and Criteria.

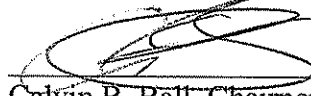
Based on the foregoing findings of fact and conclusions of law, the Zoning Board of Howard County on this 23RD day of September 2009, hereby GRANTS the Petitioner's request to rezone the 20.5 acre subject parcel from the R-20-MXD-3 District to the PSC Zoning District based on Petitioner's proposed Preliminary Development Plan and Criteria as submitted to the Board.

ATTEST:



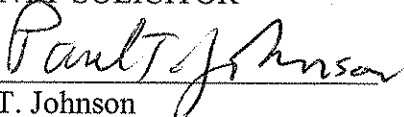
Robin Regner
Administrative Assistant

ZONING BOARD OF HOWARD COUNTY



Calvin B. Ball, Chairperson

PREPARED BY HOWARD COUNTY
OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR



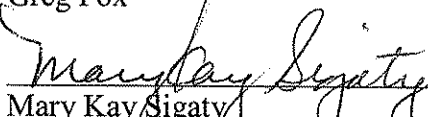
Paul T. Johnson
Deputy County Solicitor

ABSENT

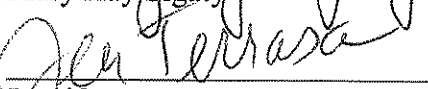
Courtney Watson, Vice Chairperson

ABSENT

Greg Fox



Mary Kay Sigaty



Jennifer Terrasa