



Howard County Council

Zoning Board of Howard County

George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043-4392

BOARD MEMBERS

Christiana Rigby, Chairperson
Deb Jung, Vice Chairperson
Opel Jones
Liz Walsh
David Yungmann

Ashley Aguilar
Administrator

Minutes (Approved)
Zoning Board Hearing
ZB1118M Erickson at Limestone Valley – Deliberation Day 2
Wednesday, September 29, 2021, 6:00 p.m.
Banneker Room and Web-based Virtual Meeting
Streamed at <https://cc.howardcountymd.gov/Online-Tools/Watch-Us>
Broadcast Channels 44 (Verizon) and 99 (Comcast)

Members Present: Christiana Mercer Rigby, Zoning Board Chairperson; Deb Jung, Zoning Board Vice Chairperson; Opel Jones, Zoning Board Member; Liz Walsh, Zoning Board Member; and David Yungmann, Zoning Board Member.

Staff Present: Ashley Aguilar, Board Administrator; Ann Nicholson, Board Assistant and David Moore, Principal Attorney.

The Chairperson called the hearing to order at **6:15** p.m.

Purpose

The Chairperson announced deliberations of ZB1118M Erickson at Limestone Valley to consider an amendment to the zoning map to reclassify 62.116 acres from B-2 & RC-DEO to CEF-M community enhancement floating zone mixed use zoning district for development of a continuing care retirement community (there is no longer a redeveloped motor vehicle fueling station and convenience store).

Motion and Vote

The Chairperson moved to approve the minutes from June 23, 2021, July 27, 2021 and September 9th, 2021. The motion was seconded by Mr. Yungmann.

The roll call vote called by the Administrator on the motion was: Yea: Zoning Board Members Jones, Jung, Rigby and Yungmann. Abstain: Zoning Board Member Walsh.

The motion to approve the minutes passed.

Preliminary Matter

The Chairperson provided an update on ZB1119M Hickory Ridge Village Center. The Administrator found the Conflict Resolution Center of Baltimore County and a mediator began initial contact of parties for intake on September 24th.

Motion and Vote

Zoning Board Member Jung moved to accept the Conflict Resolution Center (CRC) of Baltimore County as the mediator for the Hickory Ridge redevelopment case. The motion was seconded by Mr. Yungmann.

The roll call vote called by the Administrator on the motion was: Yea: Zoning Board Members Jung, Rigby, Walsh and Yungmann. Abstain: Zoning Board Member Jones.

The motion passed.

Clarification on Mediation

Ms. Jung asked for clarification on who has been contacted by the mediator and what the next steps are. Ms. Aguilar replied she sent an update to the Board that the CRC of Baltimore County has reached out to the initial three parties: the Petitioner's Attorney (Mr. Sang Oh), the opposition for Hickory Ridge (Mr. Alan Schwartz) and the attorney for the Hickory Ridge Association (Mr. Macy Nelson). There is only initial intake and contact to be made to all three parties right now. Ms. Jung asked if the mediator gave Ms. Aguilar an expected calendar to anticipate how many meetings would be needed and Ms. Aguilar replied no. Ms. Aguilar is not involved in the mediation.

Clarification on Motions and Requests

Ms. Rigby cited the opposition of Erickson at Limestone Valley case requests clarification (submitted by S. Kohn 11/21/2021), the emergency motion for clarification of the denial of motions and Zoning Board's designation of DCP-11 as the "baseline" (submitted by J. Hurewitz on 9/24/2021) and a motion for reconsideration (submitted by A. Schneider 9/21/2021).

Ms. Rigby addressed the motions filed concerning the Petitioners requested amendment and the Board's use in its deliberations of a map that omits the motor vehicle fueling facility. To address the motions and to clarify, Ms. Rigby said the Board did not grant the requested amendment and is using the map not as evidence but demonstratively to assist in its discussion. The Board has the authority, if it approves the petition, to modify the development concept plan including by excluding a parcel from the scope of any approved plan.

The Chairperson denied the motions.

Discussion

Today the Board will continue discussing the criteria and modifications should the Board members agree the petition is approvable.

The Board began the discussion with enhancements. Ms. Jung summarized and reread the earlier deliberations from their previous meeting. She asked who should set the MIHU rate for someone when they

apply to be a resident of Erickson. Ms. Walsh said to include it in the Department of Housing and Community Development Board's program that they already perform. Ms. Jung asked if there were MIHU units at Miller's Grant and Ms. Walsh replied she wasn't sure of what the current circumstances were there. Mr. Yungmann asked if the Commission changes the rates for incoming residents and/or for people already living there and the other members weren't sure. Mr. Yungmann said MIHU doesn't work in Continuing Care Retirement Community (CCRC). Ms. Jung clarified 15% of the 1220 (180 units) or 10% of the total which is 1440 (144 units). Ms. Rigby asked if Erickson testified on how many beds they had available and Mr. Yungmann said that was moot as they don't take in people from the outside. Mr. Yungmann asked if the MIHU subsidy was coming from Department of Housing and he clarified the money from Housing goes back to Housing to be recycled.

Motion

The Chairperson moved to meet the criteria of the enhancements needed for the Moderate Income Housing Units to qualify, that they modify to 10% of residential units with availability to proceed along the continuum of care in the advanced care units at Erickson Limestone Valley, to increase the scholarship fund to five million dollars, to have the monthly fee be determined by DCHD's Board as part of their existing Moderate Income Housing Unit public process with the remainder of the estate to be returned to the family of the resident. The motion was seconded by Dr. Jones.

Ms. Jung moved to amend the 10% to 10% of all units to 1440 (144 units). The motion was seconded by Ms. Rigby.

Discussion

Ms. Rigby thought the purpose of doing 10% for the units was so you don't need to reserve a portion of the 200 that are in the 1400 because they have the reservation for the care. Ms. Jung replied the units are available anyway and there is no testimony saying they won't be available so no need to hold back from doing 10% of the total. The assisted living is part of the residence and should be included in establishing the percentages. Ms. Rigby said 1200 are considered residential and 200+ continuing care units are considered differently. Dr. Jones said he remembered residents wouldn't start in continuing care. Ms. Jung said to do 10% that applies to both or 15% that just applies to the living units. Mr. Yungmann said the units set aside for MIHU are all going to be congregate units as there is no specific designation once you get into the higher levels of care. Ms. Walsh agreed this was an exercise in picking a number. She said this was the Zoning Board's opportunity to provide a good chunk of affordable housing to a population that needs it and they shouldn't start at the minimum. Ms. Rigby is concerned if they go too high they will get nothing.

Dr. Jones asked who was in Banneker and Ms. Rigby said they could make modifications and then the Petitioner could say if they work or not. Ms. Walsh asked about having more information and bringing parties back in. Ms. Rigby asked Mr. Moore to send Ms. Walsh the relevant portion of the code.

Motion

Ms. Jung moved to amend the 15% of residential units to 1020 (180 units).

Discussion

Ms. Jung said it would have to be a minimum of 10% because that is what the code requires. Mr. Yungmann said 12% and Ms. Jung said that would be 140 units.

Motion

Ms. Jung moved to amend her amendment from 180 units to 140 units which is 12% of the living units which is 1220 units (146 units). The motion was seconded by Ms. Rigby.

Discussion

Ms. Rigby asked what the argument is for 146 versus 180. Ms. Jung replied she would do 180, she was just trying to find a compromise.

Motion

The Chairperson withdrew her previous motion. The motion to withdraw was seconded by Dr. Jones.

The Chairperson moved that to meet the criteria of the enhancements needed for the Moderate Income Housing Units to qualify, that they modify to 15% of residential units (180 units) with availability/opportunity to proceed along the continuum of care in the advanced care units at Erickson Limestone Valley, to increase the scholarship fund to five million dollars, to have the monthly fee be determined by DCHD's Board as part of their existing Moderate Income Housing Unit public process with the remainder of the estate for an individual in a MIHU to be returned to the family of the resident. The motion was seconded by Ms. Jung.

Discussion

Mr. Yungmann thinks this is excessive and will just make it more expensive for everyone else. He said this also includes the scholarship fund. Ms. Walsh said the Petitioner opted for this and thinks 15% is too low. Dr. Jones is concerned with what happens to the other units as the cost gets passed down and thinks market rates will shoot out of control. Ms. Rigby asked Ms. Jung for the total number of units at Erickson and she replied it was 1220. Ms. Rigby suggested doing the 1220 units and have 140 as MIHU and then give an additional 40 units that must be MIHU. Ms. Walsh doesn't understand the logic because they don't know if it is viable or desirable. Mr. Moore clarified that while the zoning regulations provide an entitlement for the Petitioner to request an additional hearing, if the Board imposes any modifications in an approval of the petition, that doesn't mean the Board is without authority to request additional information.

Ms. Jung wants to add that Erickson executes an MIHU alternative compliance agreement along with the recordation of an accompanying covenant or memorandum of alternative compliance agreement that documents the operational accommodations as community enhancements to be made by Erickson in perpetuity. She also wants to add that Erickson would waive the right to convert the MIHUs to market rate units. Ms. Jung said this case is a unique request that will create a level of density and the community enhancements are deservedly large.

Dr. Jones asked what allows the Board to increase things and Mr. Moore explained enhancements saying they must be proportionate to the increase in development intensity and impacts, free and open to the general public and may be provided on a vicinal site within the delineated community pursuant to evaluation on a case by case basis. The regulations provide a list that enhancements can include but it is not an exhaustive list. Dr. Jones said it isn't explicit that they have the authority and Mr. Moore replied it is the Board's judgement that controls what enhancements meet the proportionality test. For a MIHU requirement the regulations provide a minimum of 10% of the total number of dwelling units when there is no underlying MIHU requirement for the applicable zoning district that proceeded the floating zone. Dr. Jones asked could

the Zoning Board say 10% is not enough or make 15% the minimum requirement met in the concept plan and Mr. Moore replied that was in the Zoning Board's authority. Mr. Yungmann said there isn't an MIHU requirement in an assisted living facility. It will be more expensive for people who don't qualify for MIHU to move into this building. He thinks they should do the minimum that they need and do the five-million-dollar scholarship fund. Ms. Jung said the attorneys knew the zoning regulations and what the minimum 10% MIHU was.

Motion

The Chairperson moved to meet the MIHU requirements and qualify as a community enhancement, that they modify to 12% of residential units (146 units) with availability to proceed along the continuum of care in the advanced care units at Erickson Limestone Valley, a total scholarship fund of five million dollars, to have the monthly fee be determined by DCHD's Board as part of their existing Moderate Income Housing Unit public process with the remainder of the estate for an individual in a MIHU to be returned to the family. Erickson executes an MIHU alternative compliance agreement regarding the monthly fee along with the recordation of an accompanying covenant or memorandum of alternative compliance agreement that documents the operational accommodations as community enhancements in perpetuity. They must satisfy the MIHU requirement with respect to each phase of development before they can move on to a subsequent phase. Erickson would also waive the right to convert the MIHUs to market rate units. The motion was seconded by Ms. Jung.

Discussion

Ms. Walsh questioned why Ms. Rigby motioned to reduce by 34 units from 180 to 146, the count of MIHUs that would be provided. Ms. Rigby replied her concern was that the costs for everyone living there would go up. Ms. Walsh says they are negotiating against themselves. Dr. Jones said we don't want to fight for more MIHUs and have market rates go up. He thinks 12% or 12½% is a good compromise.

Vote

The roll call vote called by the Administrator on the motion was: Yea: Zoning Board Members Jones, Jung, Rigby and Yungmann. Nay: Zoning Board Member Walsh.

The motion passed.

Discussion

Ms. Jung continued the discussion to streetscape enhancements. From the Technical Staff Report (TSR) she wants to propose additional requirements: Erickson maintain all built multi-use pathways to ensure safe access and use by the community; any paths within SHA right of way must be 10 feet in width, and to ensure the pathways and road enhancements would be completed before building Erickson. If Erickson can't get the land use agreements to put in the multi-model pathways, they should put in escrow the amount of money it would have cost to build those pathways. She said they should tell Erickson they have to estimate the cost of the multi-model pathways and that will have to be agreed upon by the Office of Transportation. Ms. Rigby agreed but preferred Office of Transportation set the amount. Ms. Jung said Erickson should follow the Clarksville Streetscape Plan but also fully comply with all elements and include bike lanes, lighting and benches.

Motion

Ms. Jung moved that Erickson maintain all built multi use pathways to ensure safe access and use by the broader community, that Erickson agree to put into escrow an amount determined by the Office of Transportation as to what the enhanced pathways would cost and to follow the Clarksville Streetscape Plan with all appropriate lighting and benches, that Erickson agrees all pathways in the SHA right of way will be at least 10 feet wide and that the pathway enhancements would be completed prior to the building of the first unit. The motion was seconded by Ms. Rigby.

Discussion

Mr. Yungmann asked if it was feasible to do pathway improvements that are connected to the site before the construction starts. Ms. Rigby said they would probably use the access road. Ms. Walsh asked if they were just talking about sidewalks and Ms. Jung replied yes. Ms. Walsh asked if cash money was a community enhancement and what are we measuring this against. Ms. Rigby replied cash money was for the purpose of constructing this and we are measuring against underlying zoning. Ms. Rigby added that the TSR and testimony given were the baseline. Ms. Rigby read from the TSR, but Ms. Walsh said there wasn't an evidentiary baseline. Ms. Walsh asked Mr. Moore if cash money in lieu of providing enhancements was even allowed. Mr. Moore replied the Board can accept the funding assigned for that purpose as an alternative to that public infrastructure if the Board determines that infrastructure is in itself an enhancement. Mr. Yungmann said they are just being proactive by building escrow in. Ms. Walsh asked why they can't hold the Petitioner to providing the enhancements and Ms. Rigby said that is why they are building in these protections. Ms. Jung believed Erickson stated they wouldn't have difficulty getting permissions to put in the sidewalk enhancements. Ms. Walsh thought the costs for the off-site sidewalks would come from the easement, the legal permission to use that site and not from the material. Ms. Rigby replied she wasn't confident in that.

Motion

Ms. Jung withdrew her previous motion. The motion to withdraw was seconded by Ms. Rigby.

Ms. Jung moved in addition to what is contained in the Technical Staff Report and the proffers made by Erickson that regarding sidewalk enhancements, Erickson agrees to maintain all built multi-use pathways to ensure safe access and use by the broader community, that Erickson agrees that any paths within the State Highway right of way will be at least 10 feet in width, that Erickson will fully comply with all elements set forth in the Clarksville Streetscape Plan, include bike lanes, planned improvements, lighting and benches in keeping with the Clarksville Streetscape Plan, that Erickson will complete all sidewalk enhancements on its own property before beginning any residential construction and if Erickson is unable to complete the streetscape plan on property they don't own then they will have to escrow further monies and will not be able to move on to the next phase of construction until the streetscape plan is completed. The motion was seconded by Ms. Rigby.

Discussion

Ms. Rigby said the Board doesn't have information on what the phases are, and Mr. Yungmann was concerned with phases as well as the 10-foot width requirement. Ms. Walsh is concerned with only being able to deliver what is directly on Erickson property. Ms. Rigby said to amend this to put into escrow all aspects of streetscape enhancement completion including but not limited to land acquisition, design and construction. Ms. Jung suggested moving on from the topic of streetscape enhancements.

Recess

Discussion

Ms. Rigby continued the discussion to transportation and road enhancements. She isn't sure they have enough evidence to consider if these are enhancements beyond what would be required from SHA for access. Ms. Jung referenced Mr. David Cookson in the TSR who said there were certain enhancements that were clearly required. The Petitioner stated in the TSR that transportation enhancements are subject to both SHA and Howard County approval and the specifics will likely change as the project progresses. She recommended having the Petitioner and others to come back before them. Ms. Jung read from the TSR and said the motion should include these items: cost estimates for the proposed transportation enhancements, implementation schedule for the proposed transportation enhancements, information on how the Petitioner would, in the event one or more of the proposed transportation enhancements cannot be built in the manner proposed in the submission, would ensure any revised or new transportation enhancements would continue to be proportionate to the scale of the CEF development. She reviewed the plan deficiencies, constructability on the shared use pathway, school building access and paratransit services. A traffic impact study has not been done for this project yet. She reviewed various traffic and road enhancements in the TSR. She doesn't know what any of this will cost but thinks it will be the most expensive and is the most unclear.

Ms. Rigby referenced the TSR and said to take anything considered an enhancement and list that as an enhancement. Ms. Jung said she couldn't do that since she wasn't sure of cost, what is required, and what can actually be done. Ms. Rigby said it was a worthwhile endeavor to require them to reimburse the County for the Sheppard Lane enhancement. They aren't all equal enhancements. SHA is not enthusiastic about widening roads. Mr. Yungmann asked if there was a way to get around widening that road but with or without this project someone will need to do it. Ms. Jung said widening the road should be a requirement. Ms. Walsh asked if Sheppard Lane was already re-aligned and agrees with Ms. Jung. Mr. Yungmann recommended SHA come before them. Ms. Rigby asked if they should get a more definitive list of people to help parse out the grey area of the enhancements.

Ms. Rigby continued the discussion to recreation. Ms. Jung would like to set forth the following as additional requirements. Have Rec and Parks take over the management of the amenities space and Erickson will pay for all operating and associated costs undertaken by Howard County in providing such assistance. The location of the dog park should be away from the playground to reduce potential conflicts with children. The size should be three quarters of an acre and allow a divided space for small and large dogs. They should use surface materials with federal approval. They need to be open in the early evening for people coming home from work. Ms. Rigby asked for clarification on the size and Ms. Jung said they would have to figure out how they will design it, but one quarter of an acre is not enough. Ms. Rigby referenced the TSR. Mr. Yungmann questioned the size. Dr. Jones doesn't know why size is being discussed. Ms. Jung said it was an enhancement that received a lot of attention. Ms. Rigby said to go item by item. Ms. Walsh said these measures are explicitly called out for in the criteria. She said a quarter acre is not proportionate to the size of the site.

Motion and Vote

The Chairperson moved to increase the size of the dog park from one-quarter to three-quarters of an acre. The motion was seconded by Ms. Jung.

The roll call vote called by the Administrator on the motion was: Yea: Zoning Board Members Jones, Jung, Rigby, Walsh and Yungmann.

The motion passed.

Motion and Vote

Ms. Jung moved that the location of the dog park be away from the playground. The motion was seconded by Ms. Rigby.

The roll call vote called by the Administrator on the motion was: Yea: Zoning Board Members Jones, Jung and Rigby. Nay: Zoning Board Member Yungmann. Abstain: Zoning Board Member Walsh.

The motion passed.

Discussion

Ms. Rigby showed an August 26, 2021 colored site-plan map for reference. Ms. Rigby asked if the location of the dog park on the opposite side of the stream from the playground would be sufficient. Mr. Yungmann said if they are already separated not to put them back together. He envisioned using the dog park and playground and a family would divide up by using one or the other. Ms. Jung clarified her reasoning to say children and dogs can have conflicts. She thought there was testimony that Erickson agreed to separate the dog park from the playground.

Ms. Jung wants surfacing material such as synthetic dog park turf or certified engineered wood fiber. She wants environmentally friendly materials being used. The dogs will dig up the grass and she was conscious of runoff. Ms. Rigby asked if they could use wood bark mulch and Ms. Jung didn't think that was good for dogs.

Motion

Ms. Jung moved to use environmentally friendly dog park surfacing and surfacing that is also dog friendly. The motion was seconded by Ms. Rigby.

Discussion

Dr. Jones asked who would be designing this park and Ms. Rigby said the Petitioner. Dr. Jones thought it would be a dog park specialist. Mr. Yungmann said to have Rec and Parks involved. Ms. Jung asked if Rec and Parks ran dog parks. Mr. Yungmann asked if Columbia Association (CA) ran a dog park. These agencies would not necessarily be experts or maintain it. Ms. Rigby said they need to decide if it is public use or public ownership of the land. Mr. Yungmann said if Rec and Parks maintains it to remember that they should pick the materials they want to use.

Vote

The roll call vote called by the Administrator on the motion was: Yea: Zoning Board Members Jones, Jung, Rigby and Walsh. Nay: Zoning Board Member Yungmann.

The motion passed.

Discussion

Ms. Jung wants the days and hours of business that the amenities will be open. The hours of operation for the dog park should include early evening hours for people coming home from work. Ms. Rigby asked if dawn to dusk would work and Ms. Jung said no because of less light in the winter. She said there should be lighting at the dog park and it should be open until 7:30 p.m. She didn't think it should open at dawn. Dr. Jones doesn't think they should be discussing hours of operations as it outside the scope.

Motion

Ms. Jung moved the hours of operation for the dog park should include early evening hours until at least 7:30 p.m. so people are able to go after work. The motion was seconded by Ms. Rigby.

Discussion

Dr. Jones said in the summer the sun doesn't go down until later so when it is nice out the dog park will close and people will have to leave. Ms. Jung clarified she said at least 7:30 p.m. so if Erickson wants to keep it open later, they can. Mr. Yungmann said there was a building close to the dog park and people might complain. Dr. Jones asked for clarification on the 7:30 p.m. time.

Vote

The roll call vote called by the Administrator on the motion was: Yea: Zoning Board Members Jung, Rigby, Walsh and Yungmann. Abstain: Zoning Board Member Jones.

The motion passed.

Discussion

Ms. Walsh asked if they were going to talk about the parking associated with the dog park and also about ownership and maintenance of the dog park. Ms. Rigby replied they would move into a general discussion about recreation amenities regarding public use and public ownership. Ms. Walsh asked about the agreed baseline illustrations from the exhibits and wants the online location of the document.

Ms. Jung said the parking may need to be expanded as there aren't any other dog parks in that area. Ms. Rigby wants less paving and people to be able to walk there. She wants to find a balance. Ms. Walsh agreed and said the dog park space might extend to the pavement. Ms. Rigby said there would also be street parking.

Ms. Rigby continued the discussion to public use and public ownership. She said having public land under public ownership is important. She is less comfortable with public use of land under private ownership. Having the County own the park and having it under public ownership is preferable for her. Ms. Jung is fine with Erickson giving the land to the County or wanting Rec and Parks to run the amenities, but she wants Erickson to pay for the cost of the creation of the amenities and whatever it would cost for Rec and Parks to run it. Mr. Yungmann thinks it is more of a public amenity if Rec and Parks is controlling it. He doubts that the County could buy the property. He would want Erickson to bear some responsibility for the operation

and maintenance of it, like a third-party manager. Ms. Rigby thought Erickson said they would give the County the land. She added Rec and Parks is responsible to the residents of Howard County and Erickson is not. Ms. Jung said County residents should not bear any costs for this park unless Rec and Parks decided to make further enhancements. Ms. Walsh said they don't have any understanding of what the cost is for operation and maintenance but agreed it should not be a burden on the taxpayers. Ms. Rigby said for public use the public should own it and be accountable. It is more of a benefit if it becomes our County park and not have to pay the land acquisition and construction costs. She recommended Rec and Parks to come before them to advise. Dr. Jones wants the Board to be streamlined and focused. Mr. Yungmann and Ms. Jung affirmed that they want Rec and Parks involved.

Ms. Rigby asked about the list of recreation enhancements. She wants the meeting space in the welcome center to have a clear process for reservations and it should be posted on Erickson's website and the Rec and Parks website, so people know how to reserve it. Ms. Jung said they weren't given a lot of information on the welcome center. Ms. Jung asked if Rec and Parks would be running the community center and Mr. Yungmann said no. Ms. Rigby said the only free meeting space in the County is through the library system.

Ms. Rigby asked about pickleball. Ms. Jung agreed they were all good on that topic.

Ms. Rigby asked about the public playground, public amphitheater and public pavilion. Ms. Jung said the public playground should include an adult playground. Ms. Rigby would like a fence around it. Mr. Yungmann doesn't want this amenity to be used too heavily used by the residents of Erickson.

Motion

The Chairperson moved for the amphitheater to consider the sunset and positioning as well as plantings for screening and sound blockage from Route 108 and receive approval on location and positioning from Recreation and Parks. The motion was seconded by Ms. Jung.

Discussion

Ms. Walsh asked what the capacity of the amphitheater was, if there was a stage and if it was covered. She wants to know exactly what they are approving. She doesn't know how big the pavilion is either. Ms. Rigby suggested adjourning and requested Mr. Cookson, Mr. Edmondson, SHA, Ms. Cimino and Rec and Parks to provide addition information. Mr. Yungmann asked if they should consider the possibility that they won't appear, and Ms. Rigby replied that it is considered a request of their time that can't be guaranteed, and they should be ready to make judgements based on the information they have from prior testimony. Mr. Yungmann agreed but wants it to be clear that these issues might not turn out well if they don't have more information and help.

October 27th at 6pm is the next hold on the calendar to continue this case.

Adjourned: **10:20** p.m.