



Procedure, all 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 made part of the record of the case. Both the Department of Planning and Zoning and the Planning Board recommended approval of the Petition.

The Petitioner was represented by Thomas G. Coale, Esquire of Talkin & Oh, LLP. Several protestants testified in opposition to the Petition. Several supporters also appeared and testified in support of the Petition.

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

#### FINDINGS OF FACT

1. As indicated in the introduction to this case, the Petition involves the proposed amendment of the PDP for the NT District of Columbia to increase the authorized maximum residential density.

2. The DPZ presented its TSR and recommended approval of the Petition, through the testimony of Chief of the Zoning Division, Geoff Goins.

3. Petitioner provided testimony from Brian McLaughlin, President of Enterprise Homes, a successor organizer to the original developer of the Properties, Rouse. Mr. McLaughlin testified regarding the need to develop the Properties as a balanced mixed income community, the process the Petitioner must follow to carry out the development including the tax incentives necessary, and the need to replace rather than maintain the existing units.

4. Petitioner also provided testimony from Jacqueline Eng who addressed the need to maintain an adequate stock of affordable housing in Howard County and expressed the view on behalf of the Housing Affordability Coalition that approval of the Petition is necessary to do



so. Kevin McAlliley testified as Chair of the Wilde Lake Village Board in support of the Petition. Mary Kay Sigaty testified in support of the Petition, explaining her experience with the Properties as a neighbor from the time the Properties were brand new, and the importance of approving the Petition to support the public health, safety and general welfare of Howard County, especially as to the effect on the vicinity and her assessment that the requested increased density will not be problematic as to traffic or in any other fashion. Paul Revelle testified in support of the Petition on behalf of the owner of the Properties who sold them to Petitioner, and he explained some of the financial hurdles to modernizing the units while maintaining affordability for the residents. Rebecca Beall testified as a representative of the Harper's Choice Village Board in support of the Petition, including to the need to modernize the units on the Properties and to support a diverse, inclusive, sustainable and mixed income community. Josh Zucker testified in support of the Petition as a representative of Howard County For All, focused on the need to support housing affordability.

5. Petitioner presented testimony from Ned Howe, Vice President for Enterprise Community Homes. Mr. Howe explained the need for the additional density as part of creating sustainable, mixed income housing. He addressed the importance of housing residents representing a broad array of income levels to avoid a "bar bell effect" of residents falling into only two disparate ranges. He explained the process for moving existing residents to new homes as the redevelopment is carried out and their existing homes are demolished. He discussed the Howard County General Plan, including Policies 9.2, 9.6, and 10.1. He addressed the appropriateness of the proposed land use, which is the same as that presently approved. He discussed the implications of the proposed development for the surrounding community and that it would be a benefit. He also stated that the proposed mixed income redevelopment is only

achievable for Petitioner with the additional density requested and that the Petitioner proposal complies with the HCZR.

6. The Petition was presented as being based on Petitioner's plan to develop up to 300 new units to be distributed across all five properties with redevelopment of the existing, obsolete units, resulting in an expanded, mixed-income community that Petitioner's witnesses testified will be more viable and self-sustaining in the modern marketplace. The current philosophy in housing, according to Petitioner's witnesses, is that there is a balance that must be achieved to support the sustainability of the community and avoid concentrations of residents based upon income. The proposal would achieve that balance. In response to questions from the Board, Petitioner's witnesses also described the fashion in which it plans to shift existing residents around as the Properties are redeveloped and the priority existing residents will be given in populating the newly built units.

7. Petitioner's witnesses testified that the existing units do not sufficiently generate revenue and do not regularly receive supplemental support enough to be adequately maintained, in addition to being simply outdated to the point that mere maintenance is inadequate. Presently, according to Petitioner's witnesses, the existing units cycle between completely inadequate funding to maintain them and periodic influxes of funding that is not quite enough to catch up. At no point does Petitioner presently achieve a funding level based on the rents it receives for the existing units in order to fund the reconstruction that has become necessary over time.

8. Opposition testimony was focused on two points: argument that the Board lacks authority under the existing Howard County Zoning Regulations ("HCZR") to approve an amendment of the NT PDP, which point will be addressed herein principally as part of the Conclusions of Law; and arguments concerning the density requested, both as to the



appropriateness of increasing the density and of allocation of the requested density with respect to the five Properties.

9. The Board is persuaded and finds as fact based upon the evidence presented by Petitioner that the proposed density increase is consistent with the Howard County General Plan and is justified based on the criteria for amendments of PDPs as provided in Section 125.0.B.3. of the HCZR. The Board finds that it resolves the concerns raised with respect to distribution of the density across the Properties by conditions it is placing on the approval in this Decision & Order.

10. The Board finds Petitioner's evidence sufficiently persuasive to conclude that the criteria in Section 125.0.B.3 are met and that the proposal, as approved herein, is consistent with and furthers the General Plan.

11. As shown by the Petition, the TSR, and Petitioner and DPZ's testimony:

a. the proposal is consistent with the General Plan as it will increase full spectrum, mixed income, sustainable communities and is targeted to result in high quality, multi-generational, well designed communities, consistent with PlanHoward 2030 Policy 9.2 and its implementation actions;

b. it makes use of the kind of approaches found in Policy 9.6 to create a more viable housing stock available to residents across a broad range of income levels and housing circumstances;

c. it maintains the Properties effect on the vicinity by carrying through a consistent housing type and avoiding potential redevelopment of the Properties as exclusively market-rate units, as the original legal obligations for them to provide low income housing expires, or even to become targets for non-residential redevelopment;

- d. it continues the present appropriate use of this land; and,
- e. it complies with all the applicable Zoning Regulations.

12. The Board finds that the addition of up to 300 new units in total over the five Properties is appropriate, although actual implementation will in part be the responsibility of the Planning Board and DPZ in subsequent reviews. Much of the regulation of these land uses, and the criteria that apply pursuant to that regulation, is the subject of Comprehensive Sketch Plan and Final Development Plan approvals, not the PDP. The Board's current role in this case in deciding whether to approve amendment of the PDP is to decide whether to approve the increase in density.

13. The Board finds that, based on the above findings of fact, the grant of the density increase considered in this case will promote the public health, safety and general welfare of Howard County.

#### CONCLUSIONS OF LAW

1. The Board concludes, consistent with the ruling it has made repeatedly, including in both 1992 and 2004, that it possesses the authority to approve the amendment of a NT PDP in order to increase the overall density permitted by the PDP in the district, under Section 125.0.B.3. of the HCZR. Any other decision would be inconsistent with this Board's prior decisions. This Board's Conclusions of Law in ZB 1031M (February 5, 2004-Oakland Mills) remains a correct statement:

The Board concludes that it does have the implied legal authority to consider amendments to the PDP under Section 125.0.B.3. of the HCZR. Any other conclusion would leave the Zoning Board without the authority to make any changes to the PDP as originally approved by the County Commissioners in 1965

in ZB Case 412 other than annexation amendments under Section 125.0.B.6. of the HCZR. The Board concludes that this would be an inflexible and unreasonable interpretation of the New Town Regulations, and one which contradicts the past interpretation of this Board. In 1992, the Zoning Board granted an amendment to the PDP, increasing the maximum density in Columbia from 2.2 to 2.35 dwelling units per gross acre. This interpretation by the Zoning Board, the agency responsible for the administration of the New Town Regulations, that it did have the authority to increase density through a PDP amendment, should be accorded considerable weight. In addition, the Board concludes that it would be illogical for the New Town Regulations to permit a ceiling for the maximum residential density in New Town to be 2.5 dwelling units per acre, pursuant to Section 125.0.A.4. of the HCZR, but to not allow a mechanism within those Regulations to effectuate that density if deemed desirable. The Board concludes that it has the implied authority to increase the overall residential density up to the ceiling of 2.5 dwelling units per gross acre in the New Town District through a PDP amendment.

2. The Board concludes that the proposed amendment to the PDP to increase the residential density considered in this case, from the existing 2.4029 dwelling units and 14.6463 Apartment-Multifamily units per acre to the requested 2.4239 and 14.9656 units, respectively, for the sole purpose of supporting the above-described proposed mixed income residential development, satisfies the criteria for approval of PDP amendments as contained in Section 125.0.B.3. of the HCZR. After considering the guides and standards of Section 125.0.B.3. of the HCZR applicable to a PDP amendment, as opposed to the approval of the original PDP, and



based on the findings of fact made above and as further set forth below, the Board concludes as a matter of law that the PDP, as amended by this Decision & Order:

- a. Complies with the provisions of the New Town Regulations; and
- b. Constitutes a general land use plan for the Columbia New Town District designed to meet the objectives of the New Town Regulations; and
- c. Is in harmony with the General Plan; and
- d. Provides sufficient density to allow residential development of the land that is the subject of the petition, which will be an appropriate use of land; and
- e. Promotes the health, safety and general welfare of Howard County.

The maximum density established in the HCZR for Apartment-Multifamily for the entirety of the NT District is 15 dwelling units per acre on all Final Development Plans and 2.5 dwelling units per acre generally. Prior to this D&O, the PDP allowed the development of up to 14.6463 Apartment-Multifamily units and 2.4029 dwelling units in total. The Petitioner seeks to increase the density permitted by the PDP to 14.9565 Apartment-Multi-family and 2.4239 overall and therefore complies with the HCZR with respect to allowed density.

The petition does not propose any of the uses permitted only in R-MH or M-2, and does not propose to change the use designated for the subject land, therefore it does not amend the land-use percentages shown on the PDP. The PDP, both before and after amendment pursuant to this approval, designates the five subject properties as Apartment-Multifamily, provides sufficient density for the existing and the proposed development, and is an appropriate use of the land.

The Howard County General Plan, PlanHoward 2030, designates each of the five subject properties as “Established Community.” General Plan Policy 9.2 provide for “Expand[ing] full



spectrum housing for residents at diverse income levels and life stages, and for individuals with disabilities, by encouraging high quality, mixed income, multigenerational, well designed, and sustainable communities.” The Implementation Actions for this Policy call for both redevelopment of older and affordable housing and for continued expansion of current options for full spectrum, affordable housing. They specifically include institution of density incentives as a means of carrying out Policy 9.2. Policies 9.6 and 10.1 also support approving this proposal consistent with this D&O.

As set forth in Petitioner’s presentation and the DPZ TSR and as further explored by the questions raised and the answers given during the hearing, the proposal as granted by this D&O does not appear likely to adversely affect surrounding properties. As set forth in the facts as found by this D&O, the surrounding properties have been and are presently compatible with multi-family apartment development, including at the newly raised density level.

For the foregoing reasons, the Zoning Board of Howard County, Maryland on this 5<sup>th</sup> day of October, 2020, hereby GRANTS the proposed amendment to the Preliminary Development Plan of the Columbia New Town District, increasing the overall residential density as provided in the PDP from 2.4029 to 2.4239 dwelling units per gross acre, increasing the Apartment-Multi-family density from 14.6463 to 14.9565 dwelling units per acre, and increasing the allowed Apartment-Multifamily unit from 14,163 to 14,463 and the total dwelling units from 34,294 to 34,594, on the conditions that:


1. This density increase may be used only for up to 300 new housing units proposed across the five properties set forth in the Petition (10421 Twin Rivers Road; 5501-5627 Cedar Lane; 5817-5991 Harper’s Farm Road, 5503-5615 Harper’s Farm Road; and 5951-6033

Turnabout Lane), in concert with the redevelopment of the existing low-income housing units to create mixed income development; and,


2. The new units must be distributed across all five properties that are the subject of the petition, such that each site may receive no more than 100 of the new units; and,
3. The density of housing on each property shall be such that the minimum number of units on each property shall be no less than the number of existing housing units there at the time the petition was filed; and,
4. The resulting housing shall be a mixed-income combination of housing across all income levels at each site consistent with General Plan Policy 9.2.

ATTEST:

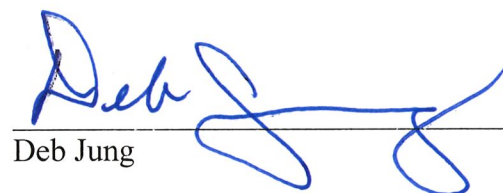
ZONING BOARD OF HOWARD COUNTY

  
Robin Regner  
Board Administrator

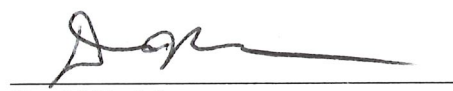
ABSENT AT TIME OF SIGNING  
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