

¹ Due to the 2018 Councilmanic election cycle, the Zoning Board was precluded from taking final action on this matter after the date of the primary election until the newly elected County Councilmembers qualified and took office, pursuant to Howard County Code 16.211. When the Board resumed proceedings in this matter, all members of the Board listened to the recording of the hearing and reviewed the exhibits presented and by their signature on this Decision & Order do attest to said action.

the Petition with modifications. The criteria applicable to a petition for a CEF District, in pertinent part, are set forth in HCRZ 121.0.I:

1. The proposed CEF District is located within the planned service area for both public water and sewer service.
2. A proposed CEF-R or CEF-M District shall have frontage on and access to an arterial or collector roadway, or a local road if access to the local road is safe based on road conditions and accident history and the local road is not internal to a residential development.
3. For all properties, the minimum development size for any CEF District shall be five acres.
4. The proposed CEF District is not located in an existing M-2, TOD, NT, MXD, or PGCC District.
5. A Proposed CEF-R District is not located in an existing non-residential zoning district unless the proposed CEF-R District adjoins a residential zoning district.²
6. The proposed CEF District is not permitted within the interior of a neighborhood comprising only single-family detached dwellings.
7. A CEF development at the proposed location shall be compatible with surrounding residential neighborhoods, existing land uses in the vicinity of the site in terms of providing a transitional use between different zoning districts and/or land uses and the scale, height, mass, and architectural detail of proposed structures.

² The CEF as approved is CEF-M. This criterion is addressed herein solely because the original petition, until modified at the initiative of the Board, was solely for residential.

8. The proposed CEF development shall include enhancements as provided in Section 121.0.G. enhancements shall be proportionate to the scale of the CEF development.
9. The proposed CEF District shall meet the criteria of the purpose statement.
10. The proposed CEF Development does not comprise parcels which were added to the Planned Service Area to achieve Bay Restoration goals articulated in Plan Howard 2030.

FINDINGS OF FACT

The Property is 34.97 acres in size, parts of which are in the R-12, CAC-CLI, and B-1 zoning districts, and it is located in the First Election District of Howard County, on the south side of U.S. route 1, approximately 500 feet southwest of Loudon Avenue. It is also identified as Tax Map 38, Grid 13, Parcels 279, 352, and 847, and it is known as 6725, 6767 and 6785 Washington Boulevard.

Petitioner presented testimony and entered exhibits into evidence through Jason Van Kirk, Petitioner's Vice President for Howard and Carroll Counties, along with other witnesses. Mr. Van Kirk has been involved with development of over 1,500 homes across 25 communities. He has an MBA with a concentration in real estate development.

Mr. Van Kirk explained the development plan, including but not limited to Petitioner's Exhibit 3, and a PowerPoint presentation (Petitioner's Exhibit 4).

Mr. Van Kirk's testimony described the present state of the Property, which essentially is a junk yard, including the remains of auto salvage operations, an abandoned and crumbling motel, and contractor's storage yards. All these conditions pose extensive environmental

remediation issues. The Property is significantly sloped from its frontage on U.S. Route 1 back towards a stream, dropping a large vertical distance over a short horizontal distance.

The property faces significant development hurdles, including a reluctant owner with whom Petitioner has been able to reach an agreement to develop only after 10 years of discussion. Petitioner has held numerous community meetings to present their plan and to receive and respond to community feedback regarding the plan, including with the Greater Elkridge Community Association.

The topography of the site imposes substantial difficulties, including slopes (some of them created by people rather than naturally occurring) which make the property undesirable for commercial development which is most readily situated, according to Mr. Van Kirk, on level land. Petitioner has provided for conduct of environmental studies on the property, which have identified the scope and nature of the contamination of the property, particularly petroleum. Petitioner has a plan to remediate the contamination within the Maryland Department of Environment's standards, at an expense estimated in the millions of dollars, should the petition be approved.

Mr. Van Kirk described the boundaries of the Property and explained Petitioner's exhibits which depict the three zoning districts that restrict the Property. He detailed that the pre-existing zoning theoretically permits up to 430 residential units, while Petitioner proposed 408, and, as set forth below, this Board approves even fewer.

Mr. Van Kirk testified, and the Board is persuaded by his testimony, as well as by the Department of Planning and Zoning Technical Staff Report ("TSR") which is a part of the record of this case, that: the property is in the planned service area for water and sewer; it has frontage on an U.S. Route 1, which the TSR notes is an intermediate arterial road; it is over

five acres; it is not located in the M-2, TOD, NT, MXD, or PGCC Districts; it adjoins residential zoning districts; it is not interior to an existing neighborhood, and it was not added to the planned service area related to bay restoration.

Mr. Van Kirk also addressed the enhancements that Petitioner proposed to provide to satisfy the zoning criteria. He testified Petitioner would provide a four-way stop light intersection at Ducketts Lane, with an Americans With Disabilities Act compliant crossing connecting the east and west sides of U.S. Route 1. He also described a proposed pedestrian park and playground open to the general public. He went over bicycle and pedestrian improvements to provide connectivity to neighboring sites, including a multi-use pathway along Route 1, as requested by the State Highway Administration ("SHA"), improved connectivity to the nearby Troy Hill Park, and connections internal to the Property including one to the adjacent Belmont Station community.

Mr. Van Kirk asserted that the environmental clean-up of the site constitutes a community enhancement under the regulations, particularly as he posits that the level of clean-up Petitioner proposes to do is to a higher standard than MDE might mandate. He describes, as well, a stream bank restoration Petitioner would carry out, including work to protect a very large sycamore tree that is presently endangered by its location proximate to the stream channel.

While the Board would be pleased to see the clean-up accomplished, it notes that any development of the property would likely require environmental remediation.

Mr. Van Kirk testified how the cohesive development of the site, including the proposed changes to its topography, permits better site design, improves utilization of the Property, highlights the environmental features, and enables the site to serve as a transitional

corridor between surrounding uses rather than the barrier the present “junk yard” poses. He discussed how development of the proposed townhomes suits the site, as they permit graduated steps in elevation from unit to unit, to better conform to the steeply-sloped topography.

Mr. Van Kirk discussed the parking analysis that Petitioner commissioned for the proposal, the conformance of the proposed townhome/apartment housing mix to the County’s General Plan, and the location of the proposed CEF district in a designated growth and revitalization and priority funding area. He testified as to the fiscal impact analysis Petitioner obtained and its conclusion that the development would have a net positive fiscal impact.

Mr. Van Kirk’s testimony also touched on suggestions that had been made to include retail as a part of the mix of development of the site along with the residential Petitioner seeks to develop. He discussed nearby commercial vacancy rates, transportation access issues posed by the Property, and other geographic limits of the site, in relation to the conditions that are preferable for commercial sites.

Mr. Van Kirk returned to the witness stand and testified later in the hearing of this matter, after and partially in response to both opposition testimony and questions from the Board itself. In this subsequent testimony, Petitioner committed to a lower maximum housing density than originally proposed, offering to construct no more than 390 units. Petitioner also adjusted its storm water management plans, as reflected in their exhibits admitted into evidence. Petitioner offered additional funding to make streambank improvements and carry out environmental clean-up, including to an adjacent County-owned parcel. Petitioner additionally altered its plans for the public park that it proposed to construct as an amenity. Petitioner updated the fiscal impact analysis it had previously provided, reaffirming student

generation rates (Petitioner's exhibit 11 and 12) and revisiting likely effects on assessed values in the area as reflected in Petitioner's exhibit 9.

Petitioner also presented testimony from Carl Gutschick, an engineer. Mr. Gutschick explained Petitioner's planning for access to the Property via a signalized intersection at Ducketts Lane and a second development access point designed to be "right-in/right-out."

Last, Petitioner presented testimony from Benjamin Griffin, a financial analyst employed by Tischler Bise, which firm prepared Petitioner's fiscal impact analysis. Mr. Griffin explained the sources of information for the analysis, including the Howard County Public School System for expected pupil generation rates from the proposed development.

The Board also heard from persons signed up to testify in support of and in opposition to the Petition.

Leslie Kornreich testified, questioning the sufficiency of the planned community enhancements, the propriety of permitting a property that is in part zoned for commercial to become entirely residential, and the accuracy of the net fiscal benefit assessment.

Victor Gardner testified that the proposed development would overwhelm the existing community and would not be compatible with surrounding neighborhoods. He also expressed concerns about the adequacy of forest retention on the Property, noise, light, increased housing density, traffic, stormwater management, and his perception of the likely impact on the value of his home.

Brian Vivrette testified as to his opinion that the Petition does not meet a variety of the CEF criteria and criticized the proposal on the basis that he believes it would overburden the public facilities that serve the area. He also opined that the plan removes too many trees and is otherwise environmentally ill-suited and that it does not provide sufficient amenities.

Cathy Hudson testified that the proposed playground would not be sufficiently attractive from U.S. Route 1, that she is concerned about noise levels within the proposed development, that the proposed housing density is too great, and that it does not provide a foot bridge across U.S. Route 1.

Liz Walsh testified that the fiscal analysis submitted by the Petitioner is flawed and that the number of students that the development would add to the County schools is understated by prior testimony.

David Ceraabowski testified in support of the Petition, noting that the permitted housing density on the Property under the existing zoning is equal to or higher than that sought by the Petition.

Jennifer Hagler testified expressing concerns about flooding she has experienced in the area, the stream at the back of the Property, and stormwater management. However, while it is not a part of the factual record of this case, Ms. Hagler in closing argument subsequently stated to the Board that she supports the Petitioner's plan because it addresses her concerns.

The Board also received evidence from the County Department of Planning and Zoning, including a Technical Staff Report, pursuant to HCZR 121.0.J.6, which evaluated the application based on the "Criteria for a CEF District" in Section 121.0.I and noted any unresolved community comments relevant to these criteria. As noted in the TSR, the development includes at least 15% moderate income housing units.

Based upon the evidence in the record of this case, the Board additionally makes the following findings of fact, in reference to the applicable criteria:

- 1. The proposed CEF District is located within the planned service area for both public water and sewer service.**

The property identified as Tax Map 38, Grid 13, Parcels 279, 352, and 847 and known as 6725, 6767 and 6785 Washington Boulevard is within the planned service area for public sewer and water and the Metropolitan District, as reflected in the exhibits and the documents on file with the Board, including the DPZ Technical Staff Report.

2. **A proposed CEF-R or CEF-M District shall have frontage on and access to an arterial or collector roadway, or a local road if access to the local road is safe based on road conditions and accident history and the local road is not internal to a residential development.**

As shown by Mr. Van Kirk's testimony and the DPZ technical staff report, the Property fronts on U.S. Route 1, which is an intermediate arterial roadway.

3. **For all properties, the minimum development size for any CEF District shall be five acres.**

As shown by the exhibits including the TSR and by Mr. Van Kirk's testimony, the property consists of 34.97 acres.

4. **The proposed CEF District is not located in an existing M-2, TOD, NT, MXD, or PGCC District.**

As shown by the TSR, the Property is zoned R-12, CAC-CLI, and B-1, and not in a M-2, TOD, NT, MXD, or PGCC District.

5. **A Proposed CEF-R District is not located in an existing non-residential zoning district unless the proposed CEF-R District adjoins a residential zoning district.**

As noted in the TSR, the CAC-CLI and B-1 Districts are non-residential. One of the parcels that make up the Property (parcel 352) is zoned residential (R-12). The Property adjoins a residential zoning district to the

south and to the east. A CEF-M District, which this D&O creates, does not have to meet this criterion.

6. **The proposed CEF District is not permitted within the interior of a neighborhood comprising only single-family detached dwellings.**

As reflected in the TSR and shown in Petitioner's exhibits, the Property is not interior to a neighborhood of single-family detached dwellings.

7. **A CEF development at the proposed location shall be compatible with surrounding residential neighborhoods, existing land uses in the vicinity of the site in terms of providing a transitional use between different zoning districts and/or land uses and the scale, height, mass, and architectural detail of proposed structures.**

The plan, with the approved amendments, provides a minimum of 9,000 square feet of commercial pad space on the front of the property at Route 1, as depicted in Petitioner's exhibits. It provides townhomes and apartments over the remainder of the Property. As reflected in Mr. Van Kirk's testimony, the exhibits, and the TSR, the adjacent Belmont Station also has both multi-family and single-family attached residences. Harwood Park, to the east, contains primarily two-story, single-family residences, both attached and detached.

The Petition, as amended, includes multi-family and attached single family housing, screened and set back from the surrounding similar neighborhoods, as outlined in the TSR and shown in the Petitioner's exhibits.

8. **The proposed CEF development shall include enhancements as provided in Section 121.0.G. enhancements shall be proportionate to the scale of the CEF development.**

The proposed CEF development, as amended, includes:

- \$350,000 in funding to improve stream banks;
- an enhanced public park as depicted in the amended concept plan and including public art;
- clean up of the property to the highest Maryland Department Environment residential standards;
- clean-up of an adjacent property owned by the County;
- creation of a sidewalk to property next door in the direction of Belmont Trail as well as consultation with the owners of the adjacent property owner regarding connecting from Petitioner's property to Belmont Station;
- Continuation of the sidewalk in the front of the property alongside Route 1, in the direction of Loudon, subject to grant of right of way and engineering approvals; and, if not, payment of a fee in lieu to the County based upon 530 feet of sidewalk or multi-use pathway as best fits the space where it is needed, as a cost as determined by the County Department of Public Works.

9. The proposed CEF District shall meet the criteria of the purpose statement.

The Petition, as amended, redevelops a junk yard into mixed-use residential and commercial development. The development includes public art and environmental improvements, improved transportation connectivity for the immediate area, and additional commercial space on Route 1. It incorporates a mix of housing, including both townhomes and apartments,

moderate income housing units, and unrestricted as well as age-restricted adult housing.

The plan, as approved, is a more flexible design than would be possible under the existing zoning. It provides features and enhancements for the community, including: art, connectivity, recreation space, and environmental improvements. It provides a higher quality of site design and amenities than is possible to achieve under the standard provisions of existing zoning district requirements. These features and enhancements would not all be required to develop pursuant to the underlying zoning

The plan, as approved, more favorably arranges the site than would be possible under the underlying zoning, based on the steeply sloped physical site characteristics and with an eye to fit into the surrounding developments

It will serve as a transitional area by providing a mix of commercial and residential units, the latter including some variation in housing types uses compatible with the surrounding community.

It makes effective use of aggregation of the parcels it includes, which are presently underutilized.

10. The proposed CEF Development does not comprise parcels which were added to the Planned Service Area to achieve Bay Restoration goals articulated in Plan Howard 2030.

As noted in the TSR and Mr. Van Kirk's testimony, the affected parcels were not added to the Planned Service Area to achieve Bay Restoration goals articulated in Plan Howard 2030.

CONCLUSIONS OF LAW

The Board concludes that the Petition, with the amendments and modifications approved by the Board, and as set forth in this Decision & Order:

(1) Will accomplish the purposes of the CEF District.

This proposed development, with the amendments approved and modifications made by the Board, is a creative redevelopment of what is presently a junk yard into mixed-use residential and commercial development. The development, as approved, includes public art and environmental improvements, greater transportation connectivity for the immediate area, and additional commercial space for the Route 1 corridor, supported by adjacent residential. It incorporates a mix of housing, including both townhomes and apartments, the required moderate-income housing units, and age-restricted adult housing in addition to housing with such a restriction.

The plan, as approved, makes use of the greater design flexibility permitted by the CEF overlay district and the broader range of development alternatives allowed thereby, than the underlying R-12, B-1, and CAC-CLI would permit, particularly in light of the configuration of those underlying zones across the Property.

The plan, as approved, provides features and enhancements which are beneficial to the community in accordance with HCZR Section 121.0.G.3, including art, connectivity, recreation space, and environmental improvements, both in terms of extensive clean-up and improvements to protect and enhance the stream across the back of the property. Similarly, it provides a higher quality of

site design and amenities than is possible to achieve under the standard provisions of existing zoning district requirements.

The plan, as approved, more favorably arranges the site than would be possible under the underlying zoning, based on the steeply sloped physical site characteristics and with an eye to fit into the surrounding developments

The development as approved will serve as a transitional area by providing a mix of commercial and residential units, the latter including some variation in housing types. These uses are compatible with the surrounding community which includes similar housing types already.

The development as approved makes effective use of aggregation of the parcels it includes, which are presently underutilized, by permitting a cohesive development of the interwoven parcels into a better organized addition to the community than would otherwise be possible by following the three disparate B-1, R-12, and CAC-CLI underlying zones.

(2) Complies with the criteria for a CEF District in Section 121.0.I

Based upon the facts found by this Board, above, this Petition, as modified, meets the criteria in the HCZR.

(3) Meets the Moderate Income Housing Unit ("MIHU") requirements.

CAC-CLI zoning requires 15% moderate income housing; the R-12 zone requires 10%; the B-1 does not have a MIHU requirement. The Petition as amended and approved will include at least 15% moderate income housing units.

The Board approves the Petition subject to the following modifications and additional requirements to the Development Concept Plan, including, but not limited to: uses, bulk regulations, days and hours of business, or other operational issues including removal of facilities in the event of closure.

Accordingly, on this 11th day of March, 2020, the Board **HEREBY ORDERS:**

- (a) A CEF District is created covering the land in the Petition;
- (b) The Development Concept Plan, as amended and as restricted and modified by this D&O, is approved;
- (c) The bulk regulations shall be as set forth in the Development Concept Plan, as amended. The uses shall be those allowed in POR, B-1, and B-2, except the following, which are excluded: adult entertainment, commercial communication antennas and towers, funeral homes, mortuaries, carnivals and fairs, motor vehicle parts or tire stores and maintenance shops, underground pipelines, car washes.

Petitioner's Development Concept Plan ("DCP") shall remove one unrestricted apartment building with 44 units to be replaced by one age-restricted adult apartment building. The DCP shall remove 30 townhomes to be replaced by no less than 9,000 square feet of commercial pad space, fronting on U.S. Route 1.

The development shall contain a maximum of 360 residential units, with 44 units to be age-restricted adult housing, plus one unit in the age-restricted multi-family building to be a community center.

(d) The community enhancements as set forth in this D&O are approved, specifically

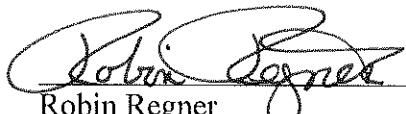
Petitioner shall:


1. Provide \$350,000 in funding to improve stream banks for the stream at the rear of the Property;
2. An enhanced public park as depicted in the amended concept plan, including public art;
3. Clean up of the property to the highest Maryland Department of the Environment residential standard;
4. Clean-up of an adjacent property owned by the County;
5. Creation of a sidewalk to the property next door in the direction of Belmont Trail as well as consultation with the owners of the adjacent property regarding connecting from Petitioner's property to Belmont Station;
6. Continuation of the sidewalk in the front of the property alongside Route 1, in the direction of Loudon, subject to grant of right-of-way and engineering approvals; and, if not, payment of a fee in lieu to the County based upon 530 feet of sidewalk or multi-use pathway as best fits the space where it is needed, at a cost as determined by the County Department of Public Works.
7. Continuation of the sidewalk along Route 1 to Troy Hill Drive, including a cross-walk at Troy Hill Drive across Route 1, and, if any portion of this

is not possible, payment of a fee in lieu to the County at a cost to be determined by the County Department of Public Works.

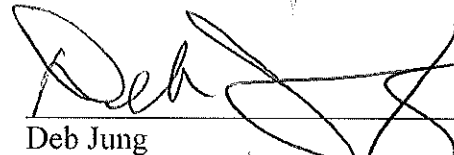
- (e) A copy of the amended Development Concept Plan and Criteria shall be provided by the Petitioner for certification as approved by the Zoning Board and a verified copy of the same shall be forwarded to the Department of Planning and Zoning and the Petitioner.

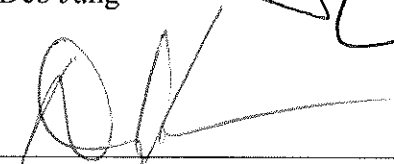
ATTEST: ZONING BOARD OF HOWARD COUNTY



Robin Regner
Board Administrator


Opel Jones, Chairperson

PREPARED BY HOWARD COUNTY
OFFICE OF LAW
GARY W. KUC
COUNTY SOLICITOR


Deb Jung


David Yungmann


David R. Moore
Senior Assistant County Solicitor


Christiana Mercer Rigby