

Waverly Gardens, LLC

* Before the Zoning Board

Petitioner

* of Howard County

* Case No. ZB 1037M

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DECISION AND ORDER

On August 16, 19, 23 and 31, 2004, the Zoning Board of Howard County considered the petition of Waverly Gardens, LLC to amend an approved documented site plan (ZB Case No. 1003M) for 2.32 acres of land identified as Tax Map 16, Grid 5, Part of Parcel 20 (Future Parcel C) (the "subject property") in order to increase the density of the proposed building from 60 dwelling units to 102 moderate income age-restricted dwelling units on the site. The subject property is located on the north side of Birmingham Way generally to the southeast of the intersection with Warwick Way.

The notice of the hearing was advertised, the subject property was posted, and adjoining property owners were mailed notice of the hearing, as evidenced by the certificates of advertising, posting, and mailing to adjoining property owners, which were made part of 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, the Planning Board's Recommendation, the records of Zoning Board Cases 1018M and 1027M and prior zoning approvals for the subject property, were made part of the record. The Department of Planning and Zoning recommended approval of the petition. The Planning Board recommended denial of the petition.

The Petitioner was represented David Carney, Esquire and Ronald Spahn, Esquire. Michael Tanczyn, Esquire, represented the Waverly Woods Core Group, which appeared in opposition to the petition.

Summary of Testimony

1. Mr. Donald Reuwer, project manager for the proposed developer, testified on behalf of the Petitioner. He stated that Waverly Woods comprised approximately 680 acres that were originally owned by three families. As part of the original master plan for Waverly Woods (ZB Case No. 929M), the petitioners made three proffers. These proffers included the development of a golf course in Howard County, the provision of an elementary school site, and the provision of 30 units of low to moderate income housing.

Mr. Reuwer stated that Waverly Gardens was an important part of the overall master plan because the development as proposed will provide the 30 units of moderate income housing proffered in the original documented site plan.

He stated that Waverly Woods is designed as a village concept. Larger lots and lower density are located around the perimeter while higher density development is located in the center, similar to other planned communities such as Columbia. He stated that there are other multi-family condominium buildings within Waverly Woods which are four stories high.

Mr. Reuwer stated that the purpose of the proposed amendment to the documented site plan is to increase the number of dwelling units from 60 dwelling units (approved in ZB Case No. 1003M) to 102 dwelling units. The additional density is needed to accommodate the transfer of the age-restricted moderate income housing units (MIHUs) required in

Courtyards East (ZB 1018M) and Courtyards West (ZB Case No. 1027M).¹ Mr. Reuwer stated that the Department of Housing and Community Development ("DHCD") did not want to have the units scattered among different parcels because the other developments (Courtyards East and West) would be subject to condominium fees which would be unaffordable for residents of the moderate income units. In addition, centralizing the moderate income units in one location allowed services such as Meals on Wheels to be delivered more efficiently, especially since the average age of those occupying the units is 70 years. The building is designed to have places where doctors can come and see patients. Mr. Reuwer testified that this centralized location is closer to commercial services because the shopping center is located across the street.

With regard to the mass of the proposed building, Mr. Reuwer stated that it was not out of character with other multi-family condominium buildings in Waverly Woods. The condominium buildings built by Mr. Azrael were also 4 stories in height. In the existing approval for the subject property (ZB 1003M), the petitioner proposed 30 moderate income housing units and 30 market rate units. These units would have had a total of 120 bedrooms. In this case, the proposed building will have 118 bedrooms. Mr. Reuwer stated that the building would not be substantially different in massing, although the building on the subject property has been re-oriented from the documented site plan approved in ZB 1003M

¹ In Zoning Board Cases 1018M and 1027M, the Zoning Board rezoned two other parcels within Waverly Woods from PEC to the PSC District. The PSC District zone requires that 10% of the total dwelling units be moderate income age-restricted dwelling units. Therefore, 36 moderate income age-restricted dwelling units were required pursuant to the approval of the rezoning of Courtyards East (ZB Case No. 1018M) and 35 moderately income dwelling units required by the approval of the Courtyards West (ZB Case No. 1027M) are to be located on this site. In addition, the petitioner is providing 30 moderate income dwelling units that were required on the subject property by the original zoning of Waverly Woods (ZB 929M) and subsequent amendment to that documented site plan (ZB Case No. 1003M). One unit is being added to the required units for a resident manager.

so that the back of the building will face the shopping center and the entrance will face the neighboring residential townhouses.

Mr. Reuwer testified that ownership of the proposed building as a rental property rather than as a condominium also better preserved the long term value. In other condominium projects, often not enough money was put in long term reserves to ensure maintenance over time.

On cross-examination, Mr. Reuwer testified that the original 30 low-moderate income units approved in ZB 929M were proposed to be scattered throughout Waverly Woods because they were not age-restricted at the time. Because these units are age-restricted, where residents would be an average of 70 years old, there was no point in scattering the units. He also testified that the first priority for occupancy would be Waverly Woods residents.

2. Mr. Jared Spahn also testified on behalf of the petitioner. He acted as the community manager for the Waverly Woods master homeowner's association. He also was the construction manager for Waverly Woods Development and a principal in the management company that maintains the common areas. He stated that Mr. Reuwer had testified on the compatibility of the location based on the proximity to services, location near the golf course clubhouse and because the mass of the building is nearer to commercial and further from the surrounding residential townhouses.

Mr. Spahn stated that Waverly Woods has architectural covenants and that the proposed building meets these covenants. The architectural elements of design, material and color of the Waverly Mansion must be incorporated into new projects. The mansion house is white, with a stucco exterior, gabled roof, covered porch and had a first story taller in

height than the second story. The design standards used in Waverly Woods are based on Georgian architecture, including elements such as covered entries, gabled roofs, and brick construction. One example is the Village Green Fairways Courtyards condominiums, which are four stories.

He stated that in 2003, the Waverly Woods HOA was shown the concept for the current proposal. He stated that no one had asked about what types of building materials were to be used. With regard to the three dimensional design, Mr. Spahn stated that there was a bump-out at one end because DHCD had informed the petitioner that there was a severe shortage of age-restricted moderate income two-bedroom units within the County. The new design permits 16 two-bedroom units.

He also stated that there was no change in the surface parking. The building design has been certified by the U.S. Green Building Council which has set forth standards for design and construction to produce a more environmental efficient building, which requires that 50% of the parking be underground. He stated that this was the first multi-family building in Maryland designed pursuant to the Council's standards, and which is LEED certified silver level building. He testified that they are providing one parking space per bedroom, however, statistics from the National Association of Homebuilders indicate that only 0.6 parking spaces per bedroom are actually utilized in this type of senior housing.

Mr. Spahn testified that some of the mass of the building stems from its design to accommodate seniors. There will be two spaces for visiting doctors, a computer lab, community laundry spaces, a community center, and communal space on the fourth floor.

Mr. Spahn stated that the building was an average of 50.33 feet in height. The average townhouse is 36 to 38 feet in height. The proposed building is three stories from

one side and four stories on the remaining sides. There are similar relationships in height and mass at other locations in Waverly Woods. Additionally, there are other developments in which rental and condominium projects are in close proximity to one another. The subject property provides a good transition between the commercial shopping center and the residential townhouses across the streets bordering the subject property. The back of the building faces the shopping center, while the front entrance faces the lower density residential townhouses.

The proposed building also covers less lot area than single family detached homes in Waverly Woods. Single family detached homes can utilize 28% of a building lot. The subject property utilizes 24% of the lot area.

Mr. Spahn testified that the building has been certified as a silver level LEED building which is a very environmentally efficient building. The building materials are lower maintenance and energy efficient. The efficiency of design reduces energy use by 35%, making it more affordable for moderate income seniors.

The project is within ½ mile of bus routes. DHCD will extend the silver line and there will be a shuttle for the active adults.

3. Mr. Ed Horde, an architect, also testified in support of the petition. He stated that senior housing requires a critical mass of 100 units because this is necessary in order to support provision of services. Sixty units is not sufficient to support these services. Scattering moderate income units for seniors makes no sense because of this necessary critical mass.

He stated that the location is an excellent one on which to place senior housing. Seniors want to look out at activity, such as the commercial parking lot within the shopping

center. The proposed development is an excellent transitional use between the commercial shopping center and the townhouses on the opposite side of the building.

The average height of the building will be 50.33 feet. One leg of the building is three stories, similar in size to other multi-family condominium buildings near the subject property. The longest arm of the building is 230 feet long--this is the arm that's bumped out. The development will also use materials that are better for maintenance.

4. Dora Pontell testified in opposition to the petition. She stated that the density and the higher topography of the site would be out of place when located in the middle of the community.

5. Ms. Betty Brown testified in opposition to the petition. She stated that the petitioner had made several promises regarding the amenities in Waverly Woods that hadn't been kept. She also stated that the petitioner had represented to the community that the project was a "done deal". The Cloisters condominium is three stories when viewed from the street. It is 4 stories from the rear. She testified that the senior housing at Parkview at Ellicott City, unlike that at Waverly Gardens, was in a park like setting with green grass and trees surrounding the project. She believes the proposed building will loom up due to its height and the higher elevation of Waverly Gardens.

6. Mr. James Hull testified in opposition to the petition. He stated that he was president of his condominium association in Waverly Woods. He testified that Waverly Woods was not an urban setting. By keeping market rate units in Courtyards West and East, the petitioner is squeezing people into the units at Waverly Gardens. He also stated that the topography of the subject property would render the building highly visible as you enter the development from Warwick Way.

7. Ms. Shun Lu testified in opposition to the petition. She stated that the Technical Staff Report found compliance with the General Plan 2000 solely on the basis that the project provided affordable housing for seniors. She believed that other goals, such as compatibility and the environment should be considered as well. She stated that the project doesn't meet the purposes of the Howard County Zoning Regulations ("HCZR") as set forth in Section 100.A of those regulations. She testified that the project does not have enough parking. Nor does it meet the purposes of the zoning regulations set forth in Section 100.A.4 of the Zoning Regulations. It does not further the efficient use of public facilities because the difference between locating the units here rather than at Courtyards East and West is only 1 to 5 minutes. Economic vitality is also preserved better by home ownership rather than having rental units.

8. Ms. Kitty Dragonette testified that she opposes the increase in density to 102 units because parking in Waverly Woods is already inadequate. The roads function as one-way roads because people park cars on both sides of the road. She is partially disabled and needs two cars. Petitioner's plans include only 5-6 handicapped parking spaces. Even though Hillingdon Road has driveways and garages, a lot of parking still occurs in the streets. Two cars can't pass each other. She is also concerned about the long term upkeep. The building may be unprofitable and lose money. She believes the site is higher than her home on Hillingdon Road.

9. Mr. Jesse T. Jackson testified in opposition to the petition. He has lived in numerous types of dwellings and believes that this is a massive building surrounded by roads. There are multi-family condominium buildings in Waverly Woods that are smaller than the building proposed on the subject property. He stated that the smaller size promotes

a sense of community. He stated that the shopping center is convenient to Waverly Gardens only as the crow flies. Birmingham Way is a major barrier because it is the main road in the community and it is very busy. In addition, the shopping center contains only local service uses; seniors will still have to go elsewhere for other needs.

10. Ms. Sherry Haddaway testified that she has lived in Howard County since she was four years old. She believes that the physical appearance of Waverly Gardens building is suburban. She wants the rural landscape of western Howard County to remain the same and not develop into a community like Columbia. She agreed with the Planning Board that the four-story structure was incompatible with the neighborhood. She stated that the petitioner had promised amenities in Waverly Woods that have never materialized. The level of amenities proffered with the Zoning Board Case No. 929M did not take into account the density of Waverly Gardens. She stated that the existing community will bear the economic burden on the use of the amenities because no condominium fee will be associated with this project.

11. Mr. Chris Riley testified that the community supported senior moderate income housing and its integration into the community. The legislation authorizing the transfer of units only creates options but not a mandate to locate the units off-site. A transfer of MIHUs to a different location is not subject to public hearing or public input. He stated that it's difficult to justify locating the units at Waverly Gardens because of proximity to the shopping center. The approval in Zoning Board Case No. 1018M specifically cited proximity to the shopping center as a justification for the approval of the condominium projects in that case. He stated that a bank of MIHUs is being built until these units can be

located off-site. He believes that the MIHU units should be integrated into the community rather than being placed in one location.

12. Mr. Lou Reymann testified that Waverly Gardens is the wrong building in the wrong place. Rather than cramming all units on one lot, there are other better locations. There is a dirt pile approximately 22 feet high on the site now. It already overshadows the second floor of adjacent townhouses. The building will sit on top of the primary entrance road up a hill. It will appear even more gigantic than it really is. The parking in Waverly Woods is already inadequate and will overflow onto the streets. In his 70-unit condominium that originally only had 6 handicapped spaces, 12 handicapped spaces are needed now. He stated that the handicapped parking is truly inadequate. He stated that putting the entrance at the location shown is not safe. The brick and glass exterior of the building does not come close to being compatible with Waverly Mansion. He testified that the increase in height over what was originally approved may not seem that big a difference, but the topography of the site in relationship to additional height makes it more significant.

13. Mr. Chris Hannon testified in opposition to the petition. He presented measurements comparing the height and distance between apartment style condominiums and neighboring townhouses in Waverly Woods. He stated that the distance from the proposed building to the proposed 3-story townhouses across Enfield Drive was 87.5 feet, which he felt was not spacious. The townhouses which could possibly go in some of the areas not yet under construction were very small in relation to the size of Waverly Gardens. The two-story townhouses that were under construction were 137.5 feet from the Waverly Gardens Building.

Referring to Protestant's Exhibit 27, Mr. Hannon testified that the height of Waverly Gardens to the midpoint of the roof was 50.3 feet. The 3-story townhouses across the street were 40.2 feet to the top of the roof. The Waverly Gardens building will block out what can be seen of the trees. The highest point of the roof on the Waverly Gardens Building is 57 feet. The building proposed on the subject property will tower over the three-story structures. The 2-story townhouses were 140 feet away but are only 32.7 feet high. The midpoint of the roof of Waverly Gardens will be 25 feet or 80-85% higher than the townhouses which are only 140 feet away.

Comparing the length of the project with the surrounding townhouses, one side of the Waverly Gardens building is 225 feet. A row of four 3-story townhouses is 88 feet long. A row of four 2-story townhouses is also 88 feet long (indicated in blue on Exhibit 27). A row of eight 3-story townhouses (indicated in yellow on Ex. 27) is 176 feet long, 33% less in length than the long arm of the Waverly Gardens building. A row of 2-story townhouses containing three units is 66 feet in length. Mr. Hannon stated that the Waverly Gardens building is monstrous and none of the surrounding rows of townhouses compare in length.

Mr. Hannon then stated that he had measured the distance of the Waverly Gardens building to the curb line of Birmingham Way. The building was 45 feet from Hillingdon Road, and ranged between 75 feet and 90 feet from Birmingham Way. He stated that the building was too big for the small parcel of land on which it would be constructed.

He then referred to Protestant's Exhibit 28. He stated that he had measured distances and heights of buildings along Birmingham Way from the Waverly Gardens building to the end of Birmingham Way. He stated that Fairway Courtyards II was the first residential development on the right along Birmingham Way as you walked away from the site of

Waverly Gardens. That project was three stories and measured 45 feet to the top of the roof. From sea level, the buildings were at the same elevation as Birmingham Way. He stated that the longest side of Building 2120 was 135 feet and the closest distance of that building to Birmingham Way was 243.5 feet. He stated that the longest side of the Building 2150 facing Birmingham Way was 76.1 feet and the distance of the closest point of that building to Birmingham Way was 139 feet. He stated that this should be compared to the 75-foot setback for the Waverly Gardens building. He stated that Birmingham Way is a major thoroughfare and these buildings are what people see when driving through Waverly Woods. He also testified that Fairway Courtyards II was 57, 075 feet on 7.751 acres with a density of 5.55 units per acre.

Mr. Hannon testified regarding the Village Greens Courtyards. Buildings 2130 and 2100 of the Village Greens Courtyards are 45 feet to the top of the roof and 39.9 feet to the midpoint of the roof. The longest side of both buildings facing Birmingham Way is 135 feet and the distance to Birmingham Way is 112.5 feet (for Building 2130) and 213.75 feet for Building 2100. He stated that these buildings were truly offset from Birmingham Way; there is nothing intervening between the building and Birmingham Way.

The next residential condominium project along Birmingham Way (proceeding from west to east) is the Cloisters. These are the two buildings located behind the four Courtyard buildings on the 8th fairway of the golf course. The Cloisters is 39 feet 3 inches to the top of the roof. Birmingham Way is 9 feet higher than the front of these buildings. Therefore, the top of the roof of the Cloisters is 30 feet, 3 inches above Birmingham Way, the lowest of all the buildings. The longest side of the building is 237 feet long and is setback 460 feet from Birmingham Way. Mr. Hannon stated that there is a 30% difference in height between

a 3-story building at Waverly Gardens and a 4-story building at that location. The Waverly Gardens building does not fit in—it will dwarf the buildings nearby; the other condominiums are further setback from Birmingham Way, especially the Cloisters which is barely visible.

Mr. Hannon stated the MIHUs approved with Zoning Board Case No. 1018M should not be transferred but remain on that site. He stated that the Technical Staff Report in this case is incorrect when it states that the MIHUs approved in ZB 1018M can be transferred to this site.

The Waverly Gardens project is not compatible with the General Plan. The General Plan states that MIHUs should be scattered, and not consolidated in one location. This is supported by the fact that the original zoning approval for Waverly Woods (Zoning Board Case No. 929M) stated that the units would be scattered throughout the community. The General Plan discourages concentrations of low to moderate income housing as set forth in Policy No. 4.2 of the General Plan. The Waverly Gardens project is an example of the warehousing of affordable housing. He stated that the Waverly Gardens project did not meet the General Plan goals of providing a variety of housing types for seniors because the all rental concept takes the option of homeownership away.

Mr. Hannon further testified that the density of a building is a component of compatibility. The original zoning approval for Waverly Woods contained 937 dwelling units. Through a series of zoning changes, the total number of dwelling units in Waverly Woods is 1,696 units—an 80% increase. This proposal would add an additional 42 units to the overall density in Waverly Woods, bringing the total increase to 85 percent.

14. Gregoriy Gadiyak testified that the proposed project did not meet Section 100.A.1 of the Zoning Regulations, which states that one purpose of the Zoning Regulations is to provide adequate light. The lights from the shopping center across the street from the project on Birmingham Way are very bright. He took pictures from the location of the proposed building which was approximately 60-80 feet from the nearest shopping center lights and was able to read a newspaper without a light. The residents of Waverly Gardens will be looking at the shopping center parking lots with the bright lights. He also stated that the residents would have no privacy. Waverly Gardens is surrounded by roads from all three sides. A senior housing project in Sykesville has only one through road and is distant from the public road. It created a sense of real privacy for the seniors there.

Comparing the proposed project to the purpose section of the zoning regulations, he testified that Waverly Gardens will result in the overcrowding of land and congestion at that location. Additional density adds not only a fourth floor, but an increased number of units. He stated that he didn't have any evidence to support his belief that the project would cause overcrowded roads.

15. Ms. Lori Carter testified regarding traffic safety. She stated that now there is only one entrance into the Courtyards East from Marriottsville Road, although two were approved in the zoning case for that property. She stated that all the traffic which would have utilized the second entrance will be funneled past Waverly Gardens. The volume of traffic will also increase because the petitioner did not subtract the number of dwelling units being transferred to Waverly Gardens from the total number of units to be developed at Courtyards East. This means that there will be an additional 36 dwelling units at Courtyards

East and additional units at Waverly Gardens. She stated that she did not have any evidence that the additional density will actually overload the roads.

16. Mr. Abel Folarin testified regarding the environmental compatibility of the proposed building. He is a mining engineer. He stated that the 102 units proposed will cause the air quality in the area to exceed the national ambient air quality standards. He did not do a study of the impact of the number of units (i.e., 60 units) that were already approved for this location.

17. Linda Smoot testified that she believed that the segregation of low to moderate income units is wrong.

18. Ms. Jane Lindsay testified that she believed that the concentration of low to moderate income units will have a stigmatizing effect on the residents who live there. She also felt that the petitioner had not been forthcoming in giving information regarding the project. She agreed with the Housing Commission that the proposal to permit the transfer of MIHU units should have been tabled to permit further consideration. She also agreed with the Housing Commission that the units should be integrated into Waverly Woods, rather than concentrated in one location there.

19. On rebuttal, Mr. Reuwer testified that the sales and marketing data used by Mr. Hannon to support his testimony was inaccurate. He stated that Fisher, Collins and Carter, a professional engineering company, had prepared a compilation of the site development plans for Waverly Woods and had performed the same measurements as Mr. Hannon had with differing results. He stated that the entrance to Waverly Woods at Marriottsville Road is at a lower elevation than the subject property and there is a slow incline upwards. The intersection of Warwick Way and Birmingham Way will have a four-

way stop when fully completed. As you turn right onto Birmingham Way there is a gentle rise in elevation.

He also testified that Birmingham Way was developed under old road standards which required a very large (80-foot) right of way. The actual paving width of the road is 44 feet. The point from the back of the curb to the property lines is 18 feet. Therefore, when you compare setbacks from Birmingham Way, the 18 foot grassy area of the right of way has to be added to the distance of the building from the property line.

The true highest elevation in Waverly Woods is not the subject property, but Fairway Courtyards I. The highest elevation of Birmingham Way is 518 feet above sea level. The first floor elevation for Fairway Courtyards I is 519 feet. The first floor elevation of Waverly Gardens is 515 feet above sea level, therefore, Waverly Gardens site does not, in fact, tower over Waverly Woods—it is four feet lower than Fairway Courtyards I.

He also stated that Fisher, Collins and Carter had scaled the "as-built" plans for other multi-family condominium buildings along Birmingham Way. The height of Building D in Fairway Courtyards I from sea level is 558 feet. It is 140 feet away from the townhouse on Lot 9 and the roof of that townhouse is 15 feet below the Courtyards I. The roofline of Fairway Courtyard I is 50 feet high.

The sea level elevation to the roofline of Building B in Fairway Courtyard II, the closest condominium building to Waverly Garden, is 545 feet. This is nine feet higher than the townhouse located across from that building on Lot 39 in Fairway Villas II. It is five feet higher than the townhouse across from the building on Lot 43 of Fairway Villas II. Driving up Birmingham Way from the entrance to Waverly Woods, the first thing you see is the office town houses which are 30 feet away from the property line—48 feet away from

paving. The next buildings you come to are the garage units associated with Building B of Fairway Courtyards II. Again, there is a 30-foot setback from the right of way and a 48 foot setback from the curb.

Mr. Reuwer testified that the next building along Birmingham Way is the first row of townhouses in Fairway Villas II. These are again setback 30 feet from the property line and 48 feet from the curb. The second row of townhouses in the same development is 70 feet from the property line. Another set of townhouses in this development is also setback 30 feet from the right of way. This evidence indicates that it is not common for buildings along Birmingham Way to be set back further than 30 from the right of way line (48 feet from the curb).

The distance from Building B in Fairway Courtyards II to the townhouse located on Lot 45 of Fairway Villas II is 58 feet. It is 65 feet from Building B to the townhouse unit on Lot 41 of that development. Building D is 140 feet from the townhouse on Lot 9 of Fairway Villas II. There is a distance of 128 feet from Fairway Villas I and Building A of Fairway Courtyard I. The building height of the Fairway Courtyard I is 50.2 feet from ground level and 558 from sea level. Waverly Gardens from street level is 50.3 feet, Building A is 50 feet.

Mr. Reuwer stated that the Protestants' case was built on data that did not utilize an accurate scale. He stated that the proposed building on the subject property is compatible and the petitioner had gone to great trouble to make it so.

The arm of Waverly Gardens building that faces the townhouses across Hillingdon Road is 170 feet long. That group of townhouses is 176 feet in length. In some instances, Mr. Hannon was measuring from the front of the yard rather than to the building. There is a

110-foot distance between the front of the building at Waverly Gardens and Unit 57 of the townhouses across Enfield Drive. It is 102 feet from the building to unit 27 of the townhouses across Hillingdon Road. The distance between the townhouses located across the intersection of Enfield Drive and Hillingdon Road (Unit 140) is 158 feet. These distances should be compared to the 140-foot distance between Building D in Fairway Courtyards I and the townhouse located on Lot 9 of Fairway Villas II.

The petitioner also compared the height of the Waverly Gardens building in relation to the surrounding townhouses and the same relationship of the multi-family condominium buildings to the townhouses located along Birmingham Way. Building D of Fairway Courtyards I is 15 feet higher than the roof of townhouse unit 9 in Fairway Villas II. Similarly, there is also a 15-foot difference in height between the Waverly Gardens building and townhouse unit 19 across Hillingdon Road. The roof of unit 57 (across Enfield Drive from the subject property) is 11 feet below roofline of Waverly Gardens. The biggest difference is the 18 feet difference between the roof of Lot 140 (opposite the subject building at the intersection of Hillingdon Road and Enfield Drive) and the corresponding corner of the Waverly Gardens building. The height of the row of townhouses across Hillingdon Road ranges between 9 to 11 feet lower than that of Waverly Gardens.

The longest arm of Waverly Gardens is 230 feet long. The building was purposely located so that the long arm was directly across the street from the shopping center rather than the townhouse units. The shopping center is a total of 645 feet long. With regard to the scale of uses, the building proposed at Waverly Gardens is small in scale when compared with the shopping center.

The distance of the long arm of Waverly Gardens to the property line fronting Birmingham Way, ranges between 75 and 80 feet, but an additional 18 feet needs to be added to that measurement because of the right of way. This is dissimilar from the buildings located further down Birmingham Way because those setbacks from the property line were generally 30 feet. The townhouses across Hillingdon Road will be 43 feet from the right of way line. In terms of setbacks, Waverly Gardens is actually an improvement to the character of Birmingham Way. The distance between Waverly Gardens and the surrounding townhouses is actually greater in some instances than the separation of structures between Fairway Courtyards II and Fairway Villas II.

With regard to the mass of the building, Mr. Reuwer testified that Exhibit 17 was a comparison of the square footage of Fairway Courtyards II and the proposed building at Waverly Gardens. Fairway Courtyards II has a covered courtyard that is not included in the square footage of the building, but makes the two buildings appear as one mass. The total square footage of the two buildings is 20,970 not including the atrium. The total square footage of Waverly Gardens is 23,360 square feet, including the covered atrium, which is not significantly different.

Mr. Reuwer stated that the conceptual design of the Waverly Gardens building has been implemented at approximately five locations in the County. These buildings are specially designed to accommodate the services needed for the age of this population. Because of the need for services, the population can't be scattered throughout the community.

Mr. Reuwer also testified regarding the traffic impact of the proposed use. He stated that the ITE manual trip generation rate was .75 peak hour trips for single family detached

homes and .07 trips for the senior housing. The petitioner is working with the Howard County Traffic Division to implement traffic calming devices on Birmingham Way. He stated that, while the ultimate determination of the measures taken would be the County's, he was hoping to see a raised crosswalk between Waverly Gardens and the shopping center.

With regard to the environment, Mr. Reuwer stated that there are no environmental features on the site. The fact that the building is a certified silver LEED building is an environmental benefit because the structure will have less an environmental impact on the area than if it were the typical building of this type.

He also testified that the second access to Waverly Woods from Marriottsville Road, which was approved in Zoning Board Case 1018M (Courtyards East), was deleted because the County required that it be right turn only. As a right turn only egress was not useful to the majority of the residents, the petitioner deleted the access and provided a second access for emergency vehicles only.

The road access is located on Enfield Drive because that vehicular access was safer. It is safer to access the property from Enfield Drive, which is a minor collector, than from Birmingham Way, which is a major collector. Both roads are designed and built to County standards and there will be a 4-way stop at Warwick Way and Birmingham Way once these roads are completed to control traffic entering the development.

Findings of Fact

1. The subject property consists of approximately 2.32 acres and is entirely within the Waverly Woods development originally approved by the Zoning Board in Case No. 929M.

2. The Zoning Board's approval of ZB 929M was conditioned on the petitioner's proffer to provide 30 affordable housing units on the subject property.

3. The subject property was rezoned to the POR District in Zoning Board Case No. 1003M. The amended documented site plan applicable to that case approved 60 dwelling units in a 3-story structure. The requirement to provide 30 affordable units (from ZB Case No. 929M) was retained.

4. Zoning Board Case No. 1018M (Courtyards East) approved rezoning land north of the subject property to the PSC District. That zoning approval required the Petitioner to provide 36 MIHUs.

5. Zoning Board Case No. 1027M (Courtyards West) approved rezoning property located to the northwest of the subject property to the PSC District. That case was also conditioned on the requirement that the Petitioner provide 35 MIHUs.

6. The Petitioner seeks in this petition to transfer the MIHUs required in the zoning approvals for Courtyards East and West to the subject property.

7. The petition in this case proposes a 3 to 4-story building with access from Enfield Drive.

8. With regard to the height above sea level for multi-family condominium buildings along Birmingham Way:

- a. Buildings A and D in Fairway Courtyards I are 558 feet above sea level.
- b. Buildings A and B of Fairway Courtyards II are 545 feet above sea level.

9. With regard to the height of multi-family condominium buildings along Birmingham Way in relation to the height of surrounding residential townhouses, the Zoning Board makes the following findings of fact:

- a. Building D of Fairway Courtyards I is 15 feet higher than the townhouse unit on Lot 9 of Fairway Villas II.
- b. Building D of Fairway Courtyards I is 13 feet higher than Lot 8 in Fairway Villas II.
- c. Fairway Courtyards II is 9 feet higher than the townhouse on Lot 39 in Fairway Villas II.
- d. Fairway Courtyards I is 5 feet higher than the townhouse located on Lot 5 of Fairway Courtyards II.

10. With regard to the distance between the multi-family condominium buildings along Birmingham Way and the surrounding residential townhouses, the Zoning Board makes the following findings of fact:

- a. The distance between Building A in Fairway Courtyards I and Fairway Villas I is approximately 128 feet.
- b. The distance between Building D in Fairway Courtyards I and Lot 9 in Fairway Villas II is 140 feet.
- c. The distance between Building A in Fairway Courtyards II and Lot 45 in Fairway Villas II is 58 feet.
- d. The distance between Building A in Fairway Courtyards II and Lot 41 in Fairway Villas II is 65 feet.
- e. Fairways Courtyard II is 20,970 square feet exclusive of the atrium.

11. With regard to the setback of structures from the curb line along Birmingham Way, the Zoning Board finds as follows:

- a. The office townhouses located south of Birmingham Way are setback 30 feet from the property line. There is an additional 18 feet of right-of-way between the property line and the paving of Birmingham Way.

- b. The garage units in Fairway Courtyards II are located 30 feet from the property line and 48 feet from the curb line of Birmingham Way.
- c. Building B of Fairway Courtyards II is setback 118 feet from the property line and 136 feet from the curb line of Birmingham Way.
- d. The first row of townhouses (proceeding from west to east on Birmingham Way) in Fairway Villas II is setback 30 feet from the property line and 48 feet from the curb line of Birmingham Way.
- e. The second row of townhouses (proceeding from west to east on Birmingham Way) in Fairway Villas II is setback 70 feet from the property line and 88 feet from the curb line of Birmingham Way.

12. The shopping center located to the south of the subject property across Birmingham Way is approximately 645 feet in total length.

13. The 8-unit row of townhouses across Hillingdon Road and Enfield Drive from the subject property is 176 feet in length.

14. For the building proposed on the subject property, the Zoning Board makes the following findings of fact:

- a. The top of the roof will be 568 feet above sea level.
- b. The building will be approximately eight to eighteen feet higher than the residential townhouses located across Enfield Drive and Hillingdon Road.
- c. The distance between the building and the residential townhouses across Enfield Drive and Hillingdon Road ranges between 102 and 178 feet.
- d. The setback of the proposed building from the curb line on Birmingham Way ranges between approximately 88 feet and 98 feet.
- e. The floor area of the proposed building will be approximately 23,360 square feet.
- f. The first floor elevation of the subject property is approximately four feet lower than the first floor elevation of Fairway Courtyards I.

- g. The longest arm of the building (facing Birmingham Way and the shopping center) is approximately 230 feet long.
 - h. The short arm of the building (along Hillingdon Road) is approximately 170 feet long.
- 15. There are no significant environmental features on the site.
 - 16. Construction pursuant to LEED certified standards, as set forth in Applicant's Exhibit 2, will result in a more energy efficient, environmentally beneficial, and lower maintenance building.
 - 17. There is a need for senior elderly housing in Howard County.

Conclusions of Law

Section 100.G.2.d of the Howard County Zoning Regulations sets forth the following criteria that the Zoning Board must consider when approving an amendment to a documented site plan:

- (1) The compatibility of the proposed development with the existing and potential land uses of the surrounding areas;
- (2) Protection of the environmental integrity of the subject property and adjoining areas in the location and design of site improvements;
- (3) The availability of safe road access for the proposed development; and
- (4) Compatibility of the proposed development with the policies and objectives of the Howard County General Plan.

In addition, when considering an amendment to a documented site plan, the Zoning Board's review is "limited to consideration of the proposed changes to the site plan(s)." HCZR 100.G.2.f.

Considering the above criteria, the Zoning Board makes the following conclusions of law:

1. The development of the subject property as shown on the documented site plan submitted with the petition is compatible with the existing and potential land uses in the surrounding areas. The distance the building is set back from Birmingham Way is within the range of comparable setbacks of other buildings along Birmingham Way. In some instances, the setback of the proposed building from Birmingham Way is an improvement in comparison to the same setback of other structures along that road.

Similarly, the distance between the proposed building and the surrounding residential townhouses is comparable to the same relationship in other multi-family condominium buildings along Birmingham Way and their surrounding residential structures. Again, in some instances, the building proposed for the subject property will be further removed from the surrounding townhouses than elsewhere in Waverly Woods. In some places, the distance between the building proposed in this petition and the surrounding townhouses has actually increased from those in the plan approved in ZB Case No. 1003M because the building has been reoriented so that the entrance faces the surrounding residential townhouses and the back of the building faces the shopping center.

While the proposed building will be ten feet higher than the highest elevation (from sea level) of other buildings along Birmingham Way, the Board does not conclude that the 10-foot difference in height is significant enough to cause the building to tower or loom over the area and thus be incompatible. The first floor elevation of the building on the subject property is four feet lower than in Fairways Courtyard I, thus the topo combined with the additional story does not cause the building to "loom." This is especially true given that the Zoning Board is limited to considering only the impact of the changes to the existing

documented site plan and that a 3-story building is already approved for this location. The Board concludes that the additional floor will be compatible with the surrounding land uses.

2. The proposed development also protects the environmental integrity of the site and surrounding areas in its design and location. As there are no environmental features on the site, development at this location will not have a negative impact on the subject property or the surrounding area, especially, again, as the Board has already approved a building similar in mass to that proposed in the instant case and it's consideration in this case is limited to the changes to what was previously approved in ZB 1003M. In addition, the building proposed will be constructed as a silver level, LEED certified building, which is both more efficient to maintain and is more protective of the environment than traditional construction. As a result, the amended petition will be an improvement from the documented site plan approved in ZB 1003M.

3. The Zoning Board also concludes that the road access to the subject property, as proposed in the petition, is safe. The Protestants have not presented any evidence that elimination of the second Marriottsville Road access to Waverly Woods will in fact have an impact on the traffic surrounding the subject property or that the additional density will cause the volume of traffic to exceed County standards. The access proposed by the Petitioner is the same as that previously approved in Zoning Board Case No. 1003M.

4. The proposed development is compatible with the policies and objectives of the Howard County General Plan. The land use recommended for the subject property in the General Plan is residential/mixed use which is in keeping with the proposed development. The petition also furthers the General Plan goals set forth in Policy Nos. 4.2 and 4.3, which encourage the provision of affordable housing as well as the provision for

housing designed to accommodate seniors. The Board disagrees with the Protestants that the petition does not meet the General Plan objective to provide a variety of housing types for these seniors. While the development proposed on the subject property may not provide the option of homeownership at this particular location, the option of homeownership for seniors exists in other areas of Waverly Woods and within Howard County. Further, while there is language in Policy 4.2 of the General Plan that affordable housing be dispersed, this cannot be read out of context with Policy 4.3, which encourages the provision of an adequate supply of housing for the elderly, including congregate living arrangements. The Board accepts Petitioner's testimony that in order to provide services and keep senior housing affordable, congregation of units at one location may be necessary.

ORDER

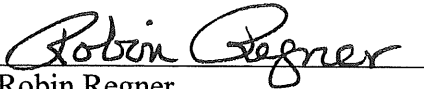
For the foregoing reasons, the Zoning Board of Howard County, Maryland, on this 4th day of October, 2004, hereby GRANTS the Petitioner's request to amend the documented site plan approved for the subject property in ZB 1003M, subject to the following conditions:

1. The Petitioner shall work with Howard County to provide safe pedestrian access to the shopping center across Birmingham Way.
2. The proposed development shall be constructed to achieve the LEED certified silver level standards as set forth in Applicant's Exhibit 2, a copy of which is attached as Exhibit A.
3. The Petitioner shall utilize the building materials proffered in the testimony to ensure a low level of maintenance over time as set forth in Applicant's Exhibit 2.

4. The additional density granted by this approval shall be used solely for the purpose of meeting the requirement from Zoning Board Case Nos. 1018M and 1027M that the Petitioner provide 10% of the total density of those developments as MIHUs.

ATTEST:

ZONING BOARD OF HOWARD COUNTY


Robin Regner
Administrative Assistant



Ken Ulman, Chairperson

DISSENT

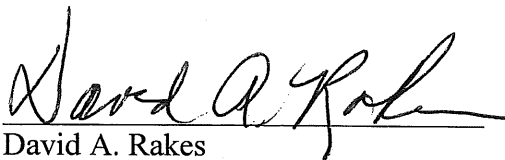
PREPARED BY HOWARD COUNTY
OFFICE OF LAW
BARBARA M. COOK
COUNTY SOLICITOR

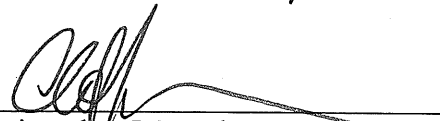
Allan H. Kittleman, Vice Chairperson

(ABSENT)


Lynn A. Robeson
Senior Assistant County Solicitor

Guy Guzzone


David A. Rakes


Christopher J. Merdon

Attachment "B"
to
Waverly Gardens Zoning Petition

10374 8/9/08

1. BUILDING DESIGN COMPATIBILITY WITH SURROUNDING AREA

The Waverly Community consists of 1700 residential units of which a total of 840 are for Active Adults. Waverly Gardens, will provide 102 of these 840 units in a secure, attractive residence for senior citizens.

- The design of the Waverly Gardens project was developed to provide a logical transition between the neighboring townhomes, single-family housing, condominiums and neighborhood shopping center.
- Residents will have full access to community amenities including the recreation center, pools and pothouses, clubhouses
- The facility is within walking distance of a wide variety of amenities – recreational shopping and transportation.
- The site is served by a campus bus line. Public Transportation via the Howard County Silver Line is proposed.
- Easy access to Interstate Highways I-70 and I-29.
- The adjacent site to the south has been developed as a small neighborhood retail shopping center, providing residents of the apartment community with a wide variety of convenient shopping within walking distance.
- The building will be four-story, wood-framed structure, over a convenient built one-story parking garage. The building will be sheathed in red and white brick for 3 floors with fiber cement siding above. This is a reflection of the predominant building materials found in both the new structures in the neighborhood and the historic Waverly Mansion located a short distance away.
- The building facade is broken into a series of bays to break down the massing of the facility and to better relate the scale of the nearby single family homes and townhouses.

2. LAYOUT WELL THOUGHT OUT

- The building layout and placement on the site take advantage of its compact size while integrating with the character of the neighborhood.
- The north facing entry circle nestled between two wings of the building creates a welcoming, protected courtyard-like space.
- The community room terrace on the second floor overlooks this space and provides a popular place from which to watch the comings and goings of people to the building.
- The front porch at the main entrance offers residents a focal point to gather. This space will be similar to the front porches and stoops found on most of the homes in Waverly.
- The site will be linked via sidewalks to a shopping center across Birmingham Way providing tenants with the option of walking or driving to a rich variety of neighborhood shopping.
- The parking for the community, most of which is located along the south side of the building will be shaded from the sun by native shade trees. The parking will be visible from the building, an important component of building security. The parking is separated by a grade change and landscaping from the roads to the south and east in order to screen it from surrounding sites.
- The parking lot stalls will incorporate pervious pavement, allowing rainwater to percolate back into the water table. This environmentally sensitive approach will

EXHIBIT

tabbies

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- Large walk-in-closets provide generous storage. This is further enhanced with additional tenant storage areas located on the second and third floors, adjacent to the elevator lobby, as well as in the basement.
- All electrical receptacles will be placed at a higher level to minimize the need to bend over for use. Thermostats will be wall mounted with large numbers for ease of use by senior residents.
- Kitchens will have a pass-through to provide light and a visual connection to the main living spaces. Wall cabinets in the kitchen will be placed lower than normal to assist the residents in reaching these cabinets.
- All units will be designed to be adaptable to persons with disabilities to meet the Fair Housing Act and will feature Universal Design features in the bathrooms and kitchens as recommended by the AARP.
- 15% percent of the units will be fully handicapped accessible. Thirteen of the one-bedroom units and three of the two-bedroom units will be fully accessible to ANSI standards.
- Four units will be designed for individuals that are vision and/or hearing impaired.
- The Community Room/Theater is directly adjacent to the Lobby, giving users many options for activities and designed to invite participation in the community's activities.
- The manager's office is efficiently located to oversee the comings and goings from the building entrances and to maintain building security.
- Connections between public spaces are direct and visual, aiding in orienting new residents.
- The card reader or number key security entry system at main entrances will be unobtrusive for the residents but effective as a safety feature for the building.

4. GOOD MATERIALS

Exterior:

- This is will be one of the first LEED Certified multi-unit residential buildings in the State of Maryland.
- Attractive, low-maintenance, environmentally sensitive materials will be used on the exterior.
- Red and white brick on the lower three levels and upgraded fibercement siding, in bays and on the uppermost part of the building.
- Long monolithic expanses of wall are avoided. Bays in the building not only break down the scale of the building, they also provide transitions between the red and white brick.
- Fibercement siding, an upgrade over vinyl siding, was selected for the upper floor and for accent panels in the masonry because it is more durable and sturdy and environmentally friendly.
- Seventy-five percent of the exterior skin will be brick.
- Upgraded standing seam metal roof will be used over the sloped roof parts of the building.
- White, EnergyStar rated EPDM roof will be used over the flat roof parts of the building.
- Durable insulated, low-e glazed, fiberglass framed windows will be employed. Window openings will be enhanced with brick soldier course headers and rowlock sills.
- The entry porch will be attractively detailed with elegant fiberglass Doric entasis-style columns and exterior lighting.

Interior:

- Corridors will feature painted wood handrails and chair rails.
- Millwork shelving in the Community Room/ Theater and lounges will add to the elegance of the experience.

- Fixtures in corridors will be directly connected to a timer in the main electrical room.
- A compact fluorescent downlight or sconce will be provided outside the entrance to each apartment suite.
- Compact fluorescent downlights or surface mounted fixtures will be provided inside each apartment suite entrance.
- A surface mounted fluorescent wraparound fixture will be provided in each apartment kitchen.
- Emergency lighting and exit signs will be provided throughout the building as required by NFPA 101.
- Exit signs will be diffuse face LED type with self-contained battery backup.
- Receptacles will be placed at assigned parking spots for electric car use as per LEED requirements.
- Split-system heat pump units with supplemental duct-mounted or internal electric heating coils will provide the heating requirements for the entire facility.
- The split system heat pump units (exterior air-cooled condensing unit located on roof and interior air handling units) will serve Common Area type spaces which will include the Community Room, Manager's Office Area, Elevator Lobby, Activity Room, Laundry Room, Storage Rooms, Health Suite, and all corridors and core spaces. Tempered air will be supplied to the areas and returned to the air handling units via rigid, sheet metal ductwork.
- Split system heat pump units will also serve all the Apartment Units/Living Areas throughout the entire facility.
- The heating systems will be designed to maintain a minimum temperature of 70°F in all occupied spaces.
- All occupied spaces of the facility will be provided with an outside air supply through the split-system heat pump air handling units.
- Exhaust systems will be provided for Apartment Toilet Rooms, Public Toilet Rooms, Janitor's Closets, Laundry Rooms, Activity Rooms, Storage Rooms, Trash Room and any other areas not specifically mentioned that require ventilation.
- As part of the LEED requirements a separate exhaust system will be provided for smoking areas to alleviate the possibility of exposure of smoke to non-smokers.
- The cooling systems will be designed to maintain a maximum temperature of 78°F in all occupied spaces.
- At the discretion of the Owner, protective guards will be provided on certain thermostats controlling the split-system heat pump units to limit accessibility.
- The maximum hot water temperature provided to the plumbing fixtures will be 110°F.
- All plumbing fixtures provided will meet ADA requirements.
- Gutters and downspouts shall handle roof drainage.

6. SITE IS SUITABLE

The site is suitable for the proposed development without major geotechnical, environmental or utility infrastructure expenditures. Grading plans demonstrate that the site can be designed to minimize soil haul off or haul on. A geotechnical report by Hillis-Carnes is attached which concludes that the site has soils that are suitable for spread footings. The contractor's cost estimate accounts for all site conditions.

The site will require a new public road entrance. The design and construction requirements for this entrance will not be outside of ordinary techniques for such entrances. All utilities (water, sewer, gas, electric and telephone) are either at the property or in the immediate vicinity of the property. Water and sewer service is available to serve the development.

- The units have been designed to have many amenities and upgrades from average apartments of this type.
- The kitchens have a pass-through to the dining area that provides natural light and views to the living areas of the apartment.
- Kitchens feature Universal Design upgrades, as recommended by the AARP, including lowered wall cabinets, open shelving, pull-out shelves in base cabinets, separate cooktop and wall mounted ovens with side swing doors, raised dishwasher and side-by-side refrigerator.
- Bathrooms also feature Universal Design upgrades such as grab bars, emergency call facilities, hand-held showers, an elevated toilet, anti-scald devices and pocket doors.
- A wireless emergency call system will be provided in the building. This system will connect to a monitored call center that can dispatch emergency assistance should it be needed.
- Garbage disposals are provided in all units.
- Cabinetry and flooring will be attractive and durable.
- Cabinets are upgraded Merrilat brand with sturdy plywood frames and maple doors. Cabinets will have wire-pull hardware making them easier to use for seniors with flexibility or mobility problems.
- Closets for linens and coats, and bedroom walk-in-closets are generous and convenient.
- Energy efficient lights will be provided in the bedroom closets, entry, kitchens and dining rooms.
- Entry doors will be metal six panel design with good quality lever hardware.
- Interior doors will be six panel hollow core with lever hardware.
- The bathrooms are spacious and will contain hand-held showers as well as bathtubs.
- Light switching and thermostats will be in easy-to-find and reach locations.
- Thermostats for the HVAC units will be wall mounted and will have large numbers for better visibility.
- Sixteen units (15%) will be fully handicapped accessible.
- Four units (4%) will be equipped for the vision and hearing impaired.
- All other units will be designed to be adaptable per Federal Housing Accessibility Guidelines.
- Wall cabinet hanging height and wall outlet heights off of the finished floor will be set so as to allow for easier reach.
- Unit party walls and unit/corridor walls will be constructed with sound-attenuation.
- Units will be provided with wood baseboards throughout except in the kitchens and bathrooms.
- Carpet will be upgraded to 28 oz. nylon material.
- Linoleum flooring (a recycled natural product) will be 1/8".
- Unit bathrooms will have upgraded ceramic tile floors and environmentally friendly fiberglass tub/shower surrounds.