

IN THE MATTER OF	:	BEFORE THE
CATTAIL CREEK COUNTRY CLUB, INC.	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	Case No. BA 19-019C
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DECISION AND ORDER

The Howard County Board of Appeals (the “Board”) met on October 29, 2019 to hear and deliberate the petition of Cattail Creek Country Club, Inc. (Petitioner), for expansion of a Conditional Use for a Golf course in an RC-DEO (Rural Conservation: Density Exchange Option Overlay) zoning district. The petition is filed pursuant to Section 131.0.N.25 of the Howard County Zoning Regulations (the “Zoning Regulations”).

Board members Neveen Kurtom, William Santos, John Lederer, James Howard and Steven Hunt participated in the hearing. Board member Howard presided over the hearing and deliberation of the case. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioner certified to compliance with the notice, posting and advertising requirements of the Howard County Code. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

The hearing was conducted in accordance with Section 2.209 of the Board’s Rules of Procedure. The Howard County Charter, the Howard County Code, the Howard County Zoning Regulations, the various technical staff reports and agency comments, the Department of Planning and Zoning’s Technical Staff Report recommendation of conditional use approval dated October 15, 2019, the General Plan for Howard County, the General Plan of Highways, and the conditional use petition and plan were incorporated into the record by reference.

The Petitioner was represented by counsel Sang W. Oh.

Robert Vogel, an engineer, testified in support of the petition. No persons appeared or testified in opposition to the petition.

FINDINGS OF FACT

Based upon the testimony and evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The 4th Election District subject property is identified as Tax Map 21, Grid 3, Parcel 211, Lots PAR A & B, and known as 3600 Cattail Creek Drive, Glenwood, Maryland (the "Property").
2. The Property is 106.97 acres in size and zoned RC-DEO (Rural Conservation: Density Exchange Option Overlay).
3. The Property is irregular in shape and contains a golf course, clubhouse, tennis courts and swimming pool. The Property is accessed from Cattail Creek Drive. The area around the clubhouse ranges from an elevation of 492 feet at the rear to 500 feet at the front entry.
4. Vicinal properties are similarly zoned and contain single-family residences to the north, south and east. To the west is farmland with a preservation easement.
5. Cattail Creek Drive is a local dead-end road with 22 feet of paving within a 50-foot right-of-way. Access to Cattail Creek Drive is from MD 97 (Roxbury Mills Road), which is a Minor Arterial with 46-feet of paving within an 80-foot right-of-way. There are numerous points of entry into the Cattail Creek Country Club from Cattail Creek Drive and no changes are proposed to these by the Petitioner.
6. The Property is not within the Metropolitan District or Planned Service Area for water and sewer. The Property is served by private well and septic facilities.

7. PlanHoward 2030 General Plan depicts the Property as Rural Resource on the Designated Place Types Map. MD 97 is depicted as a Minor Arterial on PlanHoward 2030 Road Classification Map.

8. The Petitioner proposes to expand the existing golf course facility by adding 6,715 square feet to the clubhouse. This will accommodate a new kitchen/grill area and equipment, a new HVAC system and a larger dining room. The addition will be located at the rear and on both sides of the existing building. An enlarged paved area will be added on the west side to accommodate mechanical equipment. A retaining wall is proposed at the northwest side of the building and the existing patio will be expanded and rebuilt.

9. The Petitioner proposes to continue operating a greenhouse and farm stand approved in BA-81-56E. Additionally, the Property will be used for agricultural uses permitted by right under the farming land use category. Such uses include: a pollinator meadow; community gardens; accessory sheds; and a greenhouse.

§ 131.0.B – General Standards Required for Approval; and
§ 131.0.O.25 – Specific Conditional Use Criteria for Golf Courses.

Maryland’s Common Law - *Schultz v. Pritts and its Progeny*

Maryland law requires the Board to apply the *Schultz* test when evaluating the Petition – a two-part test (or standard) that “lurks” within each individual factor the Board must consider under the Regulations. *People’s Counsel for Baltimore Cty. v. Loyola Coll. in Md.*, 406 Md. 54, 68-69 (2008) (citations omitted) (explaining *Schultz v. Pritts*, 291 Md. 1 (1981)). First, a conditional use is presumed to be “in the interest of the general welfare, and therefore, valid.” *Loyola Coll.*, 406 Md. at 84 (citations and internal quotation marks omitted). Second, the favorable presumption incorporates

the inherent adverse effects of the use. *Id.* at 79 (citations omitted).¹ *Schultz* “essentially adds language to statutory factors to be considered in evaluating proposed [conditional uses.]” *Id.* at 69 (citations omitted).

Once a conditional use complies with the applicable zoning regulations, notwithstanding even “severe” inherent adverse effects, it cannot be denied without evidence of adverse effects that are “above and beyond those inherently associated with [the use]” *Mossberg v. Montgomery Co.*, 107 Md. App. 1, 9 (1995); *see also Schultz*, 291 Md. at 22-23; *Loyola Coll.*, 406 Md. at 90, 99. The *Schultz* presumption can only be overcome with “strong and substantial” evidence of “detrimental effects above and beyond the inherent ones ordinarily associated with such uses.” *Loyola Coll.*, 406 Md. at 85 (emphasis added) (citing *Anderson v. Sawyer*, 23 Md. App. 612, 625 (1974)).

CONCLUSIONS OF LAW

Based upon the evidence presented to the Board in this case, and upon the Board’s review of the evidence, the Board makes the following Conclusions of Law:

A. General Criteria for Conditional Uses (Section 131.0.B.)

- 1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use. Section 131.0.B.1**

There are not any Howard County General Plan policies directly related conditional use requests for golf courses, however, the Board concludes that properly sited facilities are compatible with prescribed land uses for the RC zone. The golf course has existed since the early 1990’s and has received special exception/conditional use approval three times since then.

¹ The *Schultz* test is consistent with the Regulations, which presume a conditional use is “generally appropriate and compatible in the specified zoning districts” and require a finding that a conditional use does not have any “adverse effects above and beyond those ordinarily associated with such uses.” Regulations, §§ 131.0.A, 131.0.B.3.

- 2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site. Section 131.0.B.2**

The proposed 6,715 square-foot expansion consists of minor additions to a 15,708 square-foot existing clubhouse. The Property is 106.97 acres and the proposed additions are over 300 feet from the closest residential property which exceeds the 50-foot requirement. Access to the site is from MD 97, a Minor Arterial. This is a low intensity use that is appropriate for the site and the surrounding community.

- 3. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. Section 131.0.B.3.**

- a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.**

The proposed conditional use expansion will not have adverse effects on vicinal properties above and beyond those ordinarily associated with the use. The proposed expansion will not generate any physical conditions such as noise, dust, fumes, odors, lighting, vibrations or other hazards which would be discernible from abutting and vicinal properties. There is no outdoor lighting proposed for the expansion.

- b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

The clubhouse and proposed additions are in the center of the site and more than 300 feet from the closest residential property. The proposed building additions will not exceed the 34-foot

height maximum of the RC zoning district. No landscaping is proposed, and the expansion area is well buffered from adjacent uses by distance. Therefore, the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would elsewhere in the same zoning district.

- c. **The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impact on adjacent properties.**

The proposed expansion will not modify the parking and loading areas or driveways that were previously approved for the existing use. The trash receptacle area will be relocated and adequately screened with a wood fence and retaining wall. These facilities will continue to be appropriate and will sufficiently serve the proposed expansion.

- d. **The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

The Board of Appeals previously determined that the existing access drive provides safe access and adequate site distance as part of BA-90-02E. There are no proposed changes to the ingress and egress driveway(s) and the access drive will continue to provide safe access for this expansion. The conditional use does not have driveway access that is shared with other residential properties.

- e. **The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

The closest environmentally sensitive area is a stream and buffer located approximately 1,000 feet south of the site. The limited scope of the proposed expansion, however, has no potential to

affect this or other environmental areas in the vicinity of the site.

- f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.**

The closest historic structure is HO-120, known as “By His Grace” on MD 97. The proposed expansion is relatively minor in scale, is consistent with the existing golf course and country club on the Property and is located a substantial distance from this historic site. Therefore, the proposed expansion will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

B. Conditional Use Criteria for Golf Courses (Section 131.0.N.25.)

- a. A minimum setback of 50 feet is required for all structures and uses from adjoining properties. This may be reduced by the Hearing Authority if the adjoining property is a farm.**

The proposed additions are more than 300 feet from the nearest property line.

- b. A separation distance of at least 100 feet will be provided between the edge of golf course fairways and existing residential structures. The design of the fairways shall minimize the potential of errant golf shots from causing damage or hazards on adjoining properties to the greatest extent possible.**

This criterion is not applicable as no new fairway is proposed.

- c. Outdoor uses will be located and designed to shield residential property from noise or nuisance.**

The only proposed outdoor use is a patio that adjoins the clubhouse. This area is more than 300 feet from the closest property and is shielded from adjacent residential properties by the swimming pool, tennis courts and existing landscaping.

- d. Other athletic, recreational or social uses accessory to the principal use, such as typical country club uses, are permitted if approved by the Hearing Authority.**

This criterion is not applicable as no such uses are proposed.

- e. **For existing golf course approval prior to October 6, 2019, compliance with Section A and Section B above is only necessary for significant redevelopment of the facility.**

The existing golf course was approved prior to October 6, 2013, and no redevelopment is proposed. Therefore, this criterion is not applicable.

- f. **An existing use approved under the former Special Exception and Conditional Use category for “Country Clubs and Golf Courses” prior to October 6, 2013, shall be considered conforming under the conditions of the original approval. Enlargements and/or extensions to this previously approved use shall only be subject to the general standards and to Section A, Section C and Section D above.**

The existing golf course was approved prior to October 6, 2013, and the proposal complies with Sections A, C and D.

C. CONCLUSION

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard, the Board concludes that the instant petition complies with Sections 131.0.B (General Standards), and 131.0.N.25 (Specific Criteria) of the Zoning Regulations.

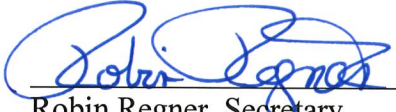
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 24th day of January, 2020, by the Howard County Board of Appeals, ORDERED:

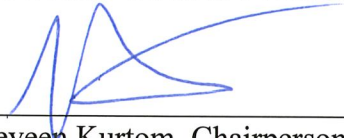
That the Petition of Cattail Creek Country Club, Inc. (Petitioner), for expansion of a Conditional Use for a Golf course in an RC-DEO (Rural Conservation: Density Exchange Option Overlay) zoning district is **GRANTED**, subject to the following condition:

1. The Petitioner shall comply with all applicable Federal, State and County laws and regulations.

ATTEST:


Robin Regner, Secretary

HOWARD COUNTY BOARD OF APPEALS



Neveen Kurtom, Chairperson

Absent AT TIME OF SIGNING
William Santos, Vice-Chairperson

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


Barry M. Sanders
Assistant County Solicitor


James Howard


Steven Hunt

Term Expired on 12/31/19 _____
*John Lederer

*Board member John Lederer's term serving on
Board of Appeals expired prior to issuance of
Decision and Order.