

Murray Hill PSC, LLC.

*

BEFORE THE ZONING BOARD

Petitioner

*

OF HOWARD COUNTY

*

ZB Case 1066M

*

*

*

*

*

*

*

*

*

*

*

*

DECISION AND ORDER

On June 20, 2007, the Zoning Board of Howard County, Maryland, considered the petition of Murray Hill PSC, LLC for an amendment to a previously approved Preliminary Development Plan, in Zoning Board Case 1041M, which rezoned the subject property from the R-ED (Residential: Environmental Development) to the PSC (Planned Senior Community) District for an age-restricted adult housing development on 18.61 acres of land located on the east side of Gorman Road approximately 1,000 feet north of Skylark Boulevard, and identified as Tax Map 47, Grid 2, Lots 1-4, 9880-9910 Gorman Road in the Sixth Election District of Howard County.

The notice of the hearing was advertised, the subject property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising and mailing to adjoining property owners which were entered into 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 and the Planning Board's recommendation, were entered or incorporated into the record of the hearing. Both the Department of Planning and Zoning and the Planning Board recommended approval of the petition.

The Petitioner was represented by David A. Carney, Esquire. Mr. Paul Revelle, a principal in Murray Hill PSC and Mr. Mickey Cornelius, a traffic consultant, testified in favor of the petition. No one appeared at the hearing in opposition to the petition.

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

FINDINGS OF FACT

1. The Zoning Board approved Petitioner's Alternative 2 Preliminary Development Plan ("PDP") as part of its grant of PSC rezoning in Zoning Board Case 1041M, which would allow development at 8 dwelling units per net acre on the subject property. Based on that approval, the Petitioner has submitted and received technically complete approval for Site Development Plan ("SDP") 06-039 with the Department of Planning and Zoning ("DPZ"). This SDP proposes 143 age-restricted adult housing units, 15 of which would be Moderate Income Housing Units ("MIHU") as required by the PSC Zoning Regulations.

2. Council Bill 48-2006, which became effective on September 1, 2006 provided an optional increased density in the PSC District of 12 dwelling units per net acre instead of 8 dwelling units per net acre for developments providing an additional 33 percent (33%) of all units over 8 dwelling units per net acre as moderate income housing units. The Petitioner proposes, on its amended PDP, that the intended use of the subject property would still be an age-restricted adult housing development. The Petitioner proposes on the amended PDP that the number of dwelling units would be increased from 143 to 215 and the number of MIHUs provided would be increased from 15 to 39 (24 of the 72 additional age-restricted dwelling units, or 33%, would be MIHUs).

3. Mr. Revelle testified that all of the proposed changes from the PDP approved in Zoning Board Case 1041M are shown in green on Petitioner's Exhibit 2, which also shows the old footprint of the development approved in ZB Case 1041M "ghosted in".

Mr. Revelle explained that the only changes were the proposed increase in density as now permitted by law, and the increased underground parking needed to accommodate that increased density. Therefore, he indicated that the 39 MIHUs required under the petition would be provided by putting 8 MIHUS in each of the slightly larger main buildings (Buildings A through D), and 7 MIHUs in the new Apartment Building E.

4. Mr. Revelle also testified that the footprint of the buildings slightly expanded because it was too expensive to keep the same footprint and add an additional floor onto the buildings.

5. Mr. Revelle also testified that the size of the community center and the amount of open space provided in the original case (ZB 1041M) was based on the number of units proposed in the subject case so that no changes to the plan as to those issues is necessary. Mr. Revelle also indicated that while there would be an increase in traffic based on the new proposal, the safety of the access to the subject property would not be affected by the increased traffic.

6. Mr. Revelle went through all the criteria for approval of an original petition/PDP and provided persuasive testimony, which the Board accepts, that the proposed increases in density would not affect the Board's original findings and conclusions on the various criteria for decision-making in this case. Mr. Revelle noted that the proposed Gorman Road improvements along the frontage of the subject property will

meet the concerns of the community on this issue. Mr. Revelle testified that a knoll at the front of the site had to be graded down to improve sight distance and that this required the removal of some trees but that the addition of 89 trees to the already existing forest adjoining the Sunbeam Place residential properties would more than adequately buffer those properties from the proposed development.

He also indicated that a second fire/rescue entrance only has been added to the subject property as noted on the plan at the County's request.

7. Mr. Revelle testified that his group had worked very hard with the Housing Department to provide the required additional MIHUs under this proposal. He added that the MIHU owners would be subject to the same condominium regime as market-rate owners. Mr. Revelle also testified that he was trying to keep the condominium fees as low as possible, in the \$300 per month range, to be affordable for MIHU owners, consistent with State standards.

8. Mr. Revelle testified that, as in the original petition, all roads and storm water management facilities in the development would be private. He noted that the storm water management system proposed for the subject property was bio-retention, which entails filtering and then releasing storm water back into the streams.

9. As to parking, Mr. Revelle testified that the additional parking needed to accommodate the increased density would be addressed through tandem parking (2 spaces per unit) and additional underground and on-street parking.

10. Mr. Mickey Cornelius, the Petitioner's traffic consultant, updated the traffic study to address the effect of increased number of dwelling units on traffic conditions. Mr. Cornelius indicated that the results of the Intersection Capacity Analyses show that all

study area intersections achieve an acceptable level of service of "C" or better based on 2010 projected traffic volumes with the proposed development of the subject property. Mr. Cornelius testified that the proposed increase in density of the subject petition has a minimal impact on the operating conditions of the study intersections. Mr. Cornelius agreed with Mr. Revelle's testimony that the leveling of the grade in front of the subject property would ensure that there is adequate sight distance at the subject property's access point to Gorman Road, ensuring safe access.

CONCLUSIONS OF LAW

1. The criteria for deciding whether approval of a proposed amendment to an already approved PDP and Criteria is justified are contained in Section 127.1G.1 through 11 of the Howard County Zoning Regulations ("HCZR") pursuant to Section 127.1 J of the HCZR. It is the petition's compliance with these criteria or standards for approval which will be applied as provided below in deciding the proposed rezoning. The Board finds that the Petitioner has met all of these standards of approval, thereby justifying the grant of PDP amendment as follows:

a. **The proposed district will accomplish the purposes of the PSC District.**

While the Board notes that the decision to rezone the subject property to the PSC Zoning District was made in ZB Case 1041M and can not be revisited in this case it also finds that the proposed amended PDP will accomplish the purposes of the PSC District by providing single-family semi-detached, attached and apartment dwelling units that are restricted to households with at least one member who is 55 years old or older residing there, together with numerous design features, amenities and services to meet the needs of seniors. The Board finds that the PSC development, as proposed for amendment, will

continue to be compatible with the nearby residential neighborhoods due to the site design and buffering proposed as part of the plan.

b. The site meets the requirements of Section 127.1.B.

Section 127.1.B.1 through 8 of the HCZR contains specific objective requirements that have to be met. Each of those requirements and the Petitioner's compliance with those requirements are addressed as follows:

1. At the preliminary development plan stage and subsequent stages of plan processing and development, the site shall be served by both public water and sewer (Section 127.1.B.1 of the HCZR).

The Petitioner indicated in the original case that the subject property is in the Service Area for Public Water and Sewer. The Department of Planning and Zoning confirmed this in its Technical Staff Report. This fact has not changed. Therefore, the Board finds that the subject property will continue to be served by both public water and sewer at this and the next stage of development.

2. The site has direct access to a collector or arterial road designated in the General Plan (Section 127.1.B.2 of the HCZR).

The subject property continues to have direct access onto Gorman Road, a minor collector road on the Transportation Map 2000-2020 of the 2000 General Plan according to the Department of Planning and Zoning's Technical Staff Report.

3. The development shall contain at least 50 dwelling units (Section 127.1.B.3 of the HCZR).

The petition to approve the amended PDP proposes development of 215 dwelling units, considerably more than the minimum requirement of dwelling units.

4. The development shall contain at least two of the following types of housing: single-family detached dwellings, single-family attached dwellings, apartments, assisted living facilities, and nursing homes. At least one of the housing types shall be independent single-family or multi-family dwellings (Section 127.1.B.4 of the HCZR).

The proposed development continues to contain at least two, in fact two types of development – single-family semi-detached units, a type of attached unit, single-family attached and apartments, at least one of which, in fact both, are designed for independent living arrangements.

5. Open space shall constitute at least 35% of the gross acreage of the planned senior community (Section 127.1.B.5 of the HCZR).

The Petitioner continues to propose providing approximately 11.24 acres of open space as part of the development of the 18.61 acre subject property, which is 60% of its gross area, far exceeding the minimum 35% open space requirement.

6. The community shall include recreation and common areas for residents, including at least pathways and seating areas (Section 127.1.B.6 of the HCZR).

The Petitioner continues to propose recreation and common areas for residents on the PDP, including an extensive pathway system throughout the property and seating areas as well.

7. At least 10% of the dwelling units shall be moderate income housing units.

The Petitioner proposes that 39 Moderate Income Housing Units (MIHUs) would be provided as part of the approval of the amended PDP which represents at least 10% of the dwelling units at the base density of 8 dwelling units per net acre (15 of 143 units) plus 33% of the additional units at the 12 dwelling units per net acre density (24 of 72). The Petitioner indicated that the units would be provided within the apartment buildings if provided on site.

8. At least one on-site community building or interior community space shall be provided that contains a minimum of:

a. 20 square feet of floor area per dwelling unit for developments of less than 100 dwelling units, and

b. 10 square feet of floor area per dwelling unit above 99.

The Petitioner proposes a 3,690 square foot community building which exceeds the 3,140 square foot building that would be required by this subsection.

c. Safe public access is available to and from the site. This includes a determination that roads serving the proposed development have the capacity to handle the increased use which is likely to result from the volume and density of the proposed development as well as development on surrounding properties. The width, sight distance and general condition of surrounding roads shall be considered in making this finding.

The subject property's access road to Gorman Road found to be safe in ZB 1041M continues to be safe. This access point will be safe due to more than adequate sight distance at this location as improved by the proposed leveling of the knoll. The Board notes that the issue of whether a deceleration lane will be provided by the developer at the access point should continue to be addressed at the site development plan stage of the development.

The Board notes that the increase in traffic attributable to the proposed development will leave the area roads with acceptable levels of service.

d. Proposed buildings are compatible with residential development in the vicinity based on scale and character of new buildings or through setbacks and landscaping.

The residential development proposed on the amended PDP will continue to be compatible with existing vicinal residential development as was indicated in ZB Case 1041M. The dwelling units within the development continue to be well buffered and set

back from the existing residential development to the south, particularly because of the additional plantings to be done by the Petitioner on Howard County's park land between the subject property and the residential development to the south. The apartment buildings have the highest elevations of any of the proposed buildings on the subject property but those buildings are located at the center of the site, well separated from the residential development to the south and the other houses to the southwest and northwest. The apartment building on the proposed amended PDP is located in the eastern portion of the site but the nearest residential development to the east is the townhouse development in Emerson quite distant from the subject property and separated by a large amount of County-owned open space. The attached dwelling units with lower elevations are appropriately located generally closer to the edges of the site to ensure compatibility with vicinal residential development. In particular, the 3 (formerly 4) semi-detached dwellings and the community building located in the western part of the property continue to be compatible with the existing residential developments across Gorman Road due to the design of those buildings to resemble large detached dwelling units.

e. Sufficient area is set aside as open space to provide green area and recreational amenities for the residents and transition areas and buffering for adjacent neighborhoods.

There is more than adequate open space proposed on the amended PDP to continue to provide green areas and recreational amenities for the future residents of the community.

f. Suitable common areas and amenities are provided for residents, including pathways, seating areas, and an adequately sized community building or interior space.

There continue to be proposed on the amended PDP pathways, a community building and recreation areas that provide suitable common areas and amenities for the future residents of the proposed community.

g. Business uses which are permitted as accessory uses will be sized for use solely by residents of the PSC District... [etc.]

There continue to be no business use proposed as part of the plan, so this subsection is inapplicable.

h. For a development that will be built in phases, open space areas will be provided in each phase to meet the needs of the residents unless otherwise provided in an earlier phase.

No phasing is proposed in the amended PDP, so this subsection is inapplicable.

i. The development and proposed dwellings are designed for older adults and incorporate universal design features. Exterior site improvements and individual dwellings will be accessible to and adaptable for residents with mobility and functional limitations.

The development and proposed dwellings continue to be designed for older adults and include numerous universal design features as delineated in the petition.

j. The development will be subject to covenants or other legal restrictions enforcing the age restrictions required for this zoning district. The legal entity that will implement and maintain the age restrictions, as well as the open space and common facilities, is clearly identified. The legal entity shall be able to provide effective enforcement to supplement County enforcement of the Zoning Regulations.

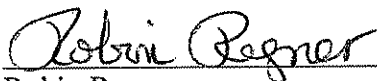
No changes have been proposed to the Declaration of Restrictions which identifies the council of unit owners for the condominium regime of Westover Glen as the legal entity that will implement the enforcement of the required age-restrictive restrictions. If the proposed amended PDP is granted, these restrictions will continue to be recorded as part of any development approval and will provide an effective enforcement entity for those covenanted age restrictions. This same legal entity will also be required to maintain the community's open space and common facilities.

k. The location of the proposed site is in conformity with the General Plan.

The proposed residential development is in harmony with the Residential Area designation for the vicinity of the subject property although the decision to rezone the property was made in ZB Case 1041M, and this petition is only concerned with the proposed amendments to the PDP and Criteria needed to effectuate the increased density on the property permitted under the HCZR.

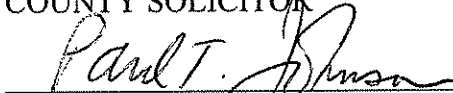
2. The Board concludes that Petitioner has met all the standards for approval of the proposed amended PDP and Criteria pursuant to Sections 127.1 J. and G.1 through 11 of the Howard County Zoning Regulations.

Based on the foregoing findings of fact and conclusions of law, the Zoning Board of Howard County on this 21ST day of September 2007 hereby **GRANTS** the Petitioner's request to approve its proposed amended Preliminary Development Plan and Criteria as submitted to the Board in the petition.

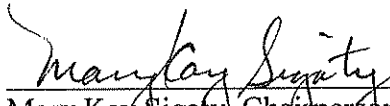


Robin Regner
Administrative Assistant

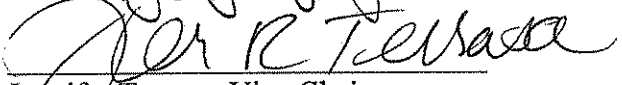
PREPARED BY HOWARD COUNTY
OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR



Paul T. Johnson
Deputy County Solicitor



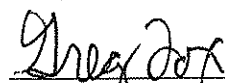
Mary Kay Sigaty, Chairperson



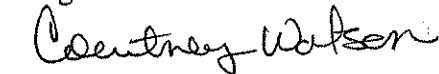
Jennifer Terrasa, Vice Chairperson



Calvin Ball



Greg Fox



Courtney Watson