

IN THE MATTER OF : BEFORE THE
CATTAIL CREEK COUNTRY CLUB : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 11-030C

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DECISION AND ORDER

On January 30, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the conditional use petition of Cattail Creek Country Club to expand a country club and golf course with a driving range instructional facility in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district pursuant to Section 131.N.16.

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. G. Thomas Cole testified in support of the petition. No one appeared in opposition to the petition.

At the outset of the hearing, Mr. Cole stated he agreed with the findings and conclusions of the Technical Staff Report (TSR).

FINDINGS OF FACT

Based upon the TSR and the preponderance of evidence presented at the hearing, I find the following facts:

1. Property Identification. The subject property is located in the 4th Election District on the west side of MD 97 about 1,230 feet northwest of the Cattail Creek Drive intersection with MD 97 (the "Property"). The Property is referenced as Tax Map 21, Grid 8, Parcel 211, Part of Parcel B and is also known as 3600 Cattail Creek Drive.

2. Property Description. The irregularly shaped 106.97-acre Property is the home of the Cattail Creek Country Club, which was established in the early 1990s and approved by the Board of Appeals as a private golf course and country club special exception use in Board of Appeals Case No. 90-02E. It has a golf course, driving range, clubhouse, swimming pool and tennis facility. These principal improvements are located in the eastern portion of the Property, which is accessed from Cattail Creek Drive, a 21-foot roadway that extends about 1,500 feet into the Property. Upon intersecting with Willow Birch Drive, the road becomes a private drive providing access to the swimming pool and tennis courts to the west. The drive then curves to the northeast, past the clubhouse to the northwest, and ends in a large parking lot. The existing outdoor driving range is located at the east end of the parking lot and there is a maintenance building near the northwest corner of the parking lot. The proposed indoor driving range instructional facility would be located southeast of the parking lot (the Site.) There is substantial natural and landscaped vegetation throughout the Property.

3. Vicinal Properties. The Site is well separated from the residential properties to the southwest. The closest adjoining property lies about 436 feet to the north and is the site of the Villas at Cattail Creek age-restricted adult housing development. The closest dwelling is approximately 800 feet distant from the Site.

4. Roads. MD 97 has two lanes within a variable width right-of-way. At the Cattail Creek/Sycamore Valley Run intersection, the paving is wider to accommodate turning and pass-by lanes.

5. Water and Sewer Service. The Property is served by private well and septic.

6. The General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as a "Rural Conservation" land use. Transportation Map 2000-2020 of the 2000 General Plan depicts MD 97 as a Minor Arterial and Cattail Creek Drive as a Local Road.

7. The Proposal. The Petitioner now proposes to construct and operate a small, 20' by 50', 20-foot high driving range instructional facility with a 10' porch for country club member use. It would be sited about 1,232 feet from MD 97. Currently, golf lessons are offered outdoors. The Range Barn would allow the club to offer indoor golf lessons during bad weather. The Range Barn would have doors facing the driving range and the doors would be open when the Barn is in use. It would have no plumbing and be used only during daylight hours, so no outdoor lighting is proposed. Current staff will give golf lessons. The hours of operation would be the same as the country club use.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

A. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. 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; and**
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

The Range Barn would be a small building operating as an accessory use to the private country club driving range. It is not a commercial range. As such, the proposed facility is a low intensity use on a very small portion of the Property and well separated from surrounding properties. The Board of Appeals has previously determined the existing access drive provides safe access and it is likely this drive will continue to provide safe access. The combination of uses is appropriate.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

The assessment of a proposed conditional use under these criteria recognizes the potential for adverse impact by virtually every human activity. The assessment therefore

accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed uses would have adverse effects in an RC district. The proper question is whether there are facts and circumstances showing the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish the proposed uses will not have adverse effects on vicinal properties beyond those ordinarily associated with a structure used primarily for religious activities in the RR district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

Given the low intensity and the limited nature of the predominately indoor use, there is no evidence of inordinate noise, significant outdoor lighting, or other physical effects detectable within the neighborhood. The use will not generate inordinate dust, fumes, odors, glare, vibrations, or hazards. Although there is some danger of flying golf balls, as the Technical Staff

Report (TSR) notes, there is no evidence that this inherent characteristic would have any atypical adverse effect.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The Site is well separated from surrounding properties and the 20' by 50', 20-foot high indoor driving range instructional facility with a 10' porch will be well separated from adjacent land and structure. There is no evidence the proposed structure would have any atypical adverse impact such that it would hinder or discourage the development and development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The existing parking lot was approved in BA 90-02E and is considered to be appropriately located and of adequate size for the new use.

d. Access. 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.

The Board of Appeals has previously determined the existing access drive provides safe access and it is likely the drive will continue to provide safe access.

II. Specific Criteria for Country Clubs and Golf Courses (Section 131.N.16)

a. A buffer area at least 50 feet wide will be maintained between structures or parking, loading and storage areas and adjacent residentially-zoned land.

The buffers for the proposed use will greatly exceed 50 feet. The petition accords with Section 131.N.16.a.

b. A distance of at least 100 feet will be provided between the edge of golf course fairways and existing residential structures.

This section is inapplicable as no new fairway is proposed.

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

Although there will be open doors, the Range Barn is essentially an indoor use, so Section 131.N.16.c is inapplicable. The associated outdoor driving range was approved in BA 90-02E and is appropriately located.

ORDER

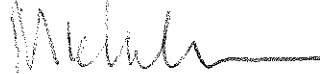
Based upon the foregoing, it is this 6th day of February 2012, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the conditional use petition of Cattail Creek Country Club to expand a country club and golf course with a driving range instructional facility in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district is hereby **GRANTED;**

Provided, however, that:

1. The conditional use shall be conducted in conformance with and shall apply only to the proposed Range Barn as described in the petition and as depicted on the Conditional Use Plan submitted on November 29, 2011, and not to any new structures or uses on the Site or any additions thereto.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.