

IN THE CIRCUIT COURT FOR HOWARD COUNTY

MARC and MELINDA JORDAN, *et al*,

Petitioners

v.

BOARD OF APPEALS OF HOWARD COUNTY,
ROBERT B. WILLIAMS, *et al*,

Respondents.

CIVIL

ACTION

NO.

13-C-07-068348 AA

MEMORANDUM OF RESPONDENTS

[Maryland Rule 7-207]

Robert B. Williams, *et al*. (hereinafter “Respondents” or “Williams”), by and through their undersigned legal counsel, hereby submit this *Memorandum of Respondents*, in response to the “Protestants’ [*sic*] Rule 7-207 Memorandum” filed on behalf of Marc and Melinda Jordan, *et al* (“Petitioners’ Memorandum”), and in opposition of the appeal of the Opinion of the County Board of Appeals for Howard County (the “Board”), dated February 1, 2007, granting the Respondents’ request, pursuant to *Howard County Zoning Regulations* (“HCZR”) § 131.N for a conditional use for age-restricted housing (the “Board’s Order”).

STATEMENT OF THE CASE

Respondents filed with Howard County a Petition for Conditional Use for a condominium regime containing fifty (50) age-restricted, adult, single-family, detached homes and related amenities in the RR-DEO (Rural Residential - Density Exchange Option Overlay) zoning district. The proposed homes, each with an attached garage, will be located

on a fifty (50) acre portion of a 127 acre parcel. After review and a recommendation of approval by the Howard County Department of Planning and Zoning (“DPZ”), a public hearing was held by the Hearing Examiner for Howard County. The conditional use plan depicted footprints of single-family, detached homes to provide the hearing authority with a conceptual depiction of the maximum size of homes that could be built. Ignoring the recommendation of approval of the DPZ, the Hearing Examiner, after erroneously concluding that all age-restricted homes were to be constructed at the maximum size and misapplying recommendations of the *Howard County General Plan 2000* (“General Plan) as absolute mandates, denied Williams’ request. Williams filed a *de novo* appeal to the Board and, after several nights of public hearing affording all parties the opportunity to present testimony and evidence, the Board approved the conditional use, subject to two conditions. The appeal to this Court by the Petitioners at this level (referred to herein as the “Protestants”) followed.

THE EVIDENCE

Technical Staff Report

The DPZ completed its Technical Staff Report, dated February 22, 2006 (“Staff Report”), after reviewing Respondents’ proposed, conditional use plan.¹ After summarizing the proposal and its general location and providing background information regarding the subject property and its environs, the DPZ then evaluated the proposal pursuant to HCZR §

¹ A copy of the *Technical Staff Report* is included herewith under Tab 1.

131.B [general criteria for conditional uses] and § 131.N.1 [specific criteria for Age-Restricted, Adult Housing]. The Staff Report first evaluated the factors to be considered regarding harmony with land uses and *General Plan* policies and then evaluated whether or not the proposed use would have any adverse effects at the proposed location beyond those normally associated with age-restricted, adult housing. The evaluation by the professional planning staff of those general and specific requirements and the DPZ recommendation to the Hearing Authority is summarized below:

HCZR § 131.B - General Criteria

- the proposed use is “predominantly residential in nature, with a low intensity of use”
- the proposed density complies with the specific density criteria in the HCZR
- the subject property is “quite large” for the use with “much open space and wide areas for buffers”
- the subject property is located on low traffic volume roads which only connect to a major road at a traffic signal
- the nature of the proposed use will be “in relative harmony with the Rural Residential land use and policies” of the General Plan and “will be in harmony with the General Plan policies encouraging housing for an aging population”
- the proposed, age-restricted housing use is “similar in character and operation as any relatively low-density, single-family detached neighborhood”
- there will “be no inordinate noise, no generation of dust, fumes, odors, glare, or vibrations, and no creation of hazards” from the proposed use
- there will be “wide buffer areas” separating the proposed use from the adjoining residential properties and the use will “not hinder or discourage the development and use of adjacent land and structures more at” the subject

property than elsewhere

- more than required parking will be provided and the parking lot will not be readily visible to the surrounding areas
- the ingress and egress drives will provide safe access with adequate sight distance; acceleration and deceleration lanes are unnecessary at this location
- the proposed use “at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with age-restricted residential developments”

Staff Report, Section IV.A (1) - (5) at page 5. (Emphases added.)

HCZR § 131.N.1 - Specific Criteria

- DPZ suggested that the proposed age-restricted, single-family, detached units [only detached and semi-detached units are allowed in the RR-DEO zone] should present inherent distinctions from other, “by-right dwellings” based on building design and/or floor plans; if no distinction exists, there would be an unallowed increase in overall density
- the total number of bedrooms must address Health Department requirements
- the Respondent² should present evidence that the dwellings qualify as age-restricted, adult housing on the basis of building design
- 50 dwelling units are proposed on 50 acres in compliance with applicable requirements
- height requirements are maintained and the plan appears to comply with or exceed the minimum setback and building separation distance requirements
- 50% of the conditional use area is required to be open space - this requirement is exceeded

² Respondents at this level were the Petitioners below, therefore, appropriate contextual changes have been incorporated in this *Memorandum*

- recreational uses comply with requirements provided that they are limited to use by owners and their guests
- the proposed community building complies with applicable size requirements
- the “general size of the dwelling units as depicted” are larger than some homes on Linden Church Road and they are relatively compatible with the homes along Twelve Hills Road
- a “significant transition buffer area is provided along the perimeter of the Site with open space and forest conservation areas”
- age restrictions will be a material inclusion in the Condominium Declaration, but it is recommended that the Respondents provide additional details on maintenance and enforcement of those restrictions
- common areas and the community building will be maintained by the Condominium Association
- although a short list of universal design features is given in Note 17, the Respondents should provide additional information to demonstrate that the proposed units are appropriate for the age-restricted population
- additional information should be provided to show compliance with the mandatory, Moderate Income Housing regulations

Staff Report, Section IV.B (1) - (14) at pages 5-7. (Emphases added.)

The Staff Report recommends approval of the requested conditional use, subject to standard conditions and the Respondents providing additional information to the Hearing Authority [Hearing Examiner/Board of Appeals] to address the comments in the evaluation.

Staff Report, Section V (1) - (5) at page 7. (Emphases added.)

The Plan

At the outset of the hearing before the Board, through their expert engineer, Jacob

Widening of Forest

Conservation Easement⁶: at the express request of Mr. and Mrs. Shi, whose property adjoins the subject property on the east (identified as Lot No. 22 on Sheet 1), the forest conservation easement was widened, pushing the proposed homes further to the west, away from the Shi's property and more toward the interior of the subject property.

Heavy Landscape Buffer

Replaced Portion of Forest Conservation⁷:

parallel to Linden Church Road, adjacent to the subject property, an area of unmaintained forest conservation was replaced with a planted and maintained Landscape Buffer - C/Heavy Landscaping.

Added Sheet 3⁸:

Sheet 3 was added to show an illustrative detail of the landscape buffer (top, left-hand portion of sheet); [the black line in the center of the proposed street with triangles at either end correlates to the '**cross sectional view**' described below];

a potential '**cross sectional view**' is shown on the bottom of this sheet; it is, essentially an illustration of what one might expect to see (along the area of the black line in the center of the street) from within a home looking across the street

the testimony before the Hearing Examiner was that the proposed homes would be a maximum of 6,000 square feet which the Hearing Examiner interpreted to mean that

⁶ See, *Transcript* at pages 15 and 37.

⁷ See *Transcript* at pages 15-16 and 36.

⁸ See *Transcript*, at pages 18 and 38-39 [landscape buffer]; 19-20 and 39-40 [cross-sectional view]; 17-18 and 40-41 [housing types]; and 28-29 and 40 [mandatory and optional features as originally presented as separate Exhibit to the Hearing Examiner]

all would be 6,000 square feet; to ensure that the Board did not make the same mistake, elevations and footprints of four housing units proposed were added for clarification

the specific evidence that all homes would be 2-4 bedrooms, that contain specific design features not found in non-age restricted dwellings would be incorporated in each home, and a list of optional features (all depicted on Exhibit No. 3 before the Hearing Examiner) was reproduced on this sheet of the Plan in the bottom right-hand corner

Mr. Hikmat testified affirmatively that in his professional opinion, none of the clarifications alter significantly the density, configuration, proposed improvements or make any other material modifications to the proposed conditional use as originally evaluated by DPZ and/or the Hearing Examiner.⁹

The proposed use is fifty (50) single-family, detached homes located on 50 acres. There will be a combined sewage treatment system and one or more wells will serve the homes. No variances from the requirements of the HCZR are requested.¹⁰ Although four, different housing products will be offered, ranging in size from 1,800 square feet to 6,000 square feet, the dwelling footprints shown on Exhibit 1 are all of the same size and all depict the largest footprint that could be expected. The largest footprints were depicted so that the Hearing Authority could evaluate the maximum amount of disturbance that might occur.¹¹

⁹ See, *Transcript* at page 20.

¹⁰ See, *Transcript* at page 17.

¹¹ See, *Transcript* at pages 33; 68-69

The mix of housing types will be market-driven. Providing a range of housing sizes will allow diversity and will permit persons aged 55 or greater to age in place in their own community.¹² The Health Department will determine the maximum number of bedrooms that can be included for all homes and that restriction will be contained in the Condominium Declaration and enforced by the Condominium Association, as well as the Howard County Health Department. Each of the homes will have an attached, two-car garage.

The project will contain a community center with pool and tennis courts as required amenities, together with associated parking areas and a paved exercise trail. Approximately 68% of the subject site will be open space in excess of the 50% required. Additionally, the buffer areas exceed the minimum requirements.¹³

The potential road noise from Maryland Route 32 was analyzed, based on traffic projections for the year 2020 and all homes are located well east of the 65 d.B.E. line, calculated without mitigation measures. The proposed homes are set back a greater distance than required by the HCZR or the gas company from the underground gas line that runs through the subject site.¹⁴ The proposed access to the development has been located and designed to adapt to any future realignment of Route 32 that may be undertaken by the State

¹² *See, Transcript* at page 27.

¹³ *See, Transcript* at page 26.

¹⁴ *See, Transcript* at pages 96-97.

Highway Administration.¹⁵ Stormwater management will be designed prior to building permit issuance, with one facility providing both water quality and quantity management. Refuse will be picked up by a private contractor as in any condominium development.

Lighting in the community will be equivalent to that in any residential, single-family home community. The security lights on the community center building and parking area will not be seen by anyone outside of the development - those lights are on the other side of the ridge line and not visible from adjoining properties.¹⁶ Lighting required on any roadways by Howard County will be provided to meet County safety requirements.

Given the location of the subject property with the homes and recreational amenities surrounded by heavy landscaping and perpetual forest conservation, the development is an “enclave”. The separation between proposed homes exceeds the County requirements so there will not be a “walled” appearance.¹⁷ Even though the conditional use proposes age-restricted, adult housing, the wholly separate requirements for providing moderate income housing must be met. Compliance with the 10% mandatory requirement is not optional. Those moderate housing units may be provided as part of the 50 dwellings proposed on the subject property or they may be provided off-site as permitted. A moderate income housing agreement and a declaration of covenants and restrictions developed by the

¹⁵ See, *Transcript* at pages 54-55.

¹⁶ See, *Transcript* at pages 81; 99-102.

¹⁷ See, *Transcript* at page 289.

County Department of Housing and Community Development will have to be executed and recorded if this mandatory requirement is met on-site.¹⁸

As to specific criteria required for approval, Mr. Hikmat opined in his professional status that¹⁹:

- the size of the property meets the requirements of the HCZR
- the proposed use addresses a stated policy of the General Plan in that it provides housing for an aging population, in a community rather than forcing them into congregate, independent or assisted living facilities
- the proposed development will not hinder or discourage development of adjacent properties
- the proposed single-family homes will not generate any extraordinary noises or vibrations
- the dwellings proposed will be comparable in scale and character with those in the community
- there will be no impact on vicinal properties
- the scale and intensity of the proposed development is appropriate and made even more so by the extensive buffers and excessive setbacks being maintained
- the use proposed will not have any adverse effects at this location above and beyond those associated with the use regardless of where located within the zone

Private Water and Sewage

Robert W. Sheesley, owner of Eco-Sense, Inc., an environmental consulting company, was called to provide his professional opinions regarding issues relating to private water supply and sewage disposal for the proposed age-restricted dwellings. Mr. Sheesley was the Environmental Health Director for the Howard County Department of Health in the mid-1980s and was the first director of Baltimore County's Department of Environmental

¹⁸ See, *Transcript* at pages 64; 305; 322.

¹⁹ See, *Transcript* at pages 58-66.

