

Case No. CDP-8309-01 The Villages of
Marlborough

Applicant: Codale Commercial Funding, LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

FINAL DECISION — ORDER AFFIRMING PLANNING BOARD

IT IS HEREBY ORDERED, after review of the administrative record and conducting oral argument on July 9, 2018, that the application to approve Comprehensive Design Plan CDP-8309-01 for The Villages of Marlborough, for approval to develop a 6.38-acre site known as Parcel O, where the Marlborough Golf Course Clubhouse building was previously located before being razed, within a larger fully-developed project known as The Villages of Marlborough, with 206 multifamily dwelling units (DUs), within Councilmanic District 6, be and the same is hereby AFFIRMED.¹

On or about April 26, 2018, the Planning Board approved Comprehensive Design Plan CDP-8309-01, for The Villages of Marlborough, to develop a 6.38-acre site known as Parcel O, where the Marlborough Golf Course Clubhouse building was previously located before being razed, within a larger fully-developed project known as The Villages of Marlborough, with 206 multifamily dwelling units. *See* PGCPB No. 18-26.

On May 14, 2018, the District Council elected to review the Board's final decision to approve CDP-8309-01. *See* Zoning Agenda, 7/9/2018.

¹ *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 528, 582, 120 A.3d 677, 700, 733 (2015) (the District Council only exercises appellate jurisdiction when reviewing the action of the Planning Board to approve or deny a comprehensive design plan and it may only reverse the action of the Planning Board if the decision was not supported by substantial evidence, is arbitrary, capricious, or illegal otherwise).

On or about May 31, 2018, Villages of Marlborough Home Owners Association (VMHOA) filed an appeal of the Planning Board's decision to the District Council. *See* Letter of Appeal, May 31, 2018. Among other things, VMHOA contends that the Board's approval of CDP-8309-01 violates a Declaration of Covenants (DOC)² between VMHOA and the Applicant because the DOC requires the 6.38-acre site known as Parcel O to remain open space. VMHOA also contends that the DOC has been adjudicated by the Circuit Court for Prince George's County and the Court of Special Appeals of Maryland. According to VMHOA, both Courts found that the DOC applies to Parcel "O" which requires the 6.38-acre site known as Parcel O to remain open space. *Id.* Letter of Appeal, p. 2.

On July 9, 2018, the District Council held oral arguments. Counsel for VMHOA indicated that the Applicant has filed a petition for writ of certiorari to the Court of Appeals to seek further review of the Court of Special Appeals' decision on the applicability of the DOC on Parcel O. Counsel for the Applicant indicated that the pending litigation on the DOC did not address or resolve whether development of Parcel O is subject to the DOC. Moreover, Counsel for the Applicant intends to further litigate whether the Board's approval of CDP-8309-01 to develop Parcel O is subject to the DOC. *See* (7/9/2018, Tr.)

The issue before the District Council is whether the Board's final decision to approve CDP-8309-01 was supported by substantial evidence, was not arbitrary, capricious, or illegal otherwise. *Zimmer Dev. Co.*, 444 Md. 490, 528, 582, 120 A.3d 677, 700, 733 (2015). The District Council

² For purposes of this application, the parties do not dispute the existence of a Declaration of Covenants. The dispute surrounds interpretation and enforceability of the Declaration in relation to development of Parcel O. A covenant that runs with the land binds not only the parties that enter into the covenant but also successive owners as well. *County Commissioners of Charles County v. St. Charles Associates Ltd. P'ship*, 366 Md. 426, 448-449 (2001). The test for determining whether a covenant runs with the land is well established. "Under Maryland law, a covenant can run with the land if: '(1) the covenant touch[es] and concern[s] the land; (2) the original covenanting parties intend the covenant to run; and (3) there be some privity of estate and that (4) the covenant be in writing.'" *Id.* at 450 (quoting *Mercantile-Safe Deposit and Trust Co. v. Mayor and City Council of Baltimore*, 308 Md. 627, 632 (1987)).

finds that it has no jurisdiction to interpret or enforce the DOC between the parties or decide whether development of Parcel O is subject to the DOC because those issues are pending on appeal. *See Brethren Mutual Insurance v. Suchowza*, 212 Md. App. 43, 63-67 (2013); *Kent Island LLC v. DiNapoli*, 430 Md. 348, 361 (2013). Upon review of the record and consideration of oral arguments, the District Council finds that the Board's decision to approve CDP-8309-01 was supported by substantial evidence, was not arbitrary, capricious, or illegal otherwise. *Zimmer Dev. Co.*, 444 Md. 490, 528, 582, 120 A.3d 677, 700, 733 (2015).

Approval of CDP-8309-01 is subject to the following conditions:

1. Prior to certificate of approval of the comprehensive design plan (CDP), the applicant shall:
 - a. Provide the total approved and constructed dwelling unit numbers on the plan and the total dwelling unit numbers for the entire project, with the addition of 206 multifamily units.
 - b. Revise the CDP to reflect the acreage of the site, with the Parcel O site information as a subset.
 - c. Remove General Note 7.
2. At the time of specific design plan, the applicant shall:
 - a. Follow the design guidelines:
 - (1) Maximum Building Height: 110 feet.
 - (2) Setbacks from streets: 10 feet, excluding public utility easement.
 - (3) Maximum Lot Coverage: 70 percent.
 - b. The building shall be designed with landmark elements, such as a tower or other unique architectural features. Additional innovative site design and landscaping techniques shall also be employed for neighborhood aesthetics and integration.
 - c. On-site parking shall be provided behind the building or in a garage.
3. All multifamily residential structures shall be fully sprinklered in accordance with National Fire Protection Association (NFPA) Standard 13D and all applicable County laws.

Ordered this 10th day of July, 2018, by the following vote:

In Favor: Council Members Davis, Franklin, Glaros, Harrison, Patterson, Taveras, and Turner.

Opposed: Council Member Lehman.

Abstained:

Absent: Council Member Toles.

Vote: 7-1.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF THE
MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____
Dannielle M. Glaros, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council