

Case No. SP-02037

Applicant: St. Paul Community
Development Corp.

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

ORDER AFFIRMING PLANNING BOARD DECISION TO APPROVE
DETAILED SITE PLAN, AND REVERSING BOARD
DECISION TO APPROVE LOT COVERAGE VARIANCE

IT IS HEREBY ORDERED, after review of the administrative record made before the Planning Board, that the decision of the Board in PGCPB No. 03-192, to approve a detailed site plan for construction of a 172-unit apartment complex for senior citizens on property described as approximately 8.95 acres of land in the R-18 Zone, known as Eagle Crest at Marlton, at the intersection of Grandhaven Avenue and Heathermore Boulevard, in Upper Marlboro, is hereby:

AFFIRMED in part, as to the Board's decision to approve the apartment complex concept generally, as it is shown on this detailed site plan; and

REVERSED in part, as to the Board's decision to approve a variance granting an increase in the allowed lot coverage on the subject property.

The District Council's decision is based on the following findings of fact and conclusions of law:

A. For the reasons stated by the Planning Board, whose findings of fact and conclusions of law are hereby adopted as the findings and conclusions of the District Council, the Council approves the apartment complex concept in general, as laid out in the applicant's detailed site plan.

The proposed apartment buildings will have about 172 households, all headed by senior citizens. These new residents will contribute to the Upper Marlboro

community but will have fewer demands on public facilities, particularly highway and public school facilities. These 172 multi-family dwelling units will not generate the normal peak-hour traffic levels on nearby highways and intersections, as senior citizen communities make fewer commuter trips than communities not restricted by age. The units will also generate many fewer school-age children than residential units without age restrictions, as most senior citizens do not have or live with children under 18.

This proposed apartment complex is appropriate at this location, and the detailed site plan shows a generally acceptable location of buildings and other improvements on the subject property. If construction and development adhere to the conditions stated below, this site plan, with reduced lot coverage, should be approved.

B. The Council cannot approve the requested variance, however, and must reverse the Planning Board's decision to grant a variance from the 30% lot coverage restriction in the Zoning Ordinance.

Under § 27-230 in the Ordinance, a variance may not be approved unless the applicant proves: (1) the property is unique and different from other nearby properties, having "exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions"; (2) the strict application of Zoning Ordinance requirements to the owner and the property "will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship" on the owner; and (3) property development with the variance, which waives a mandatory Zoning Ordinance requirement, "will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan." § 27-230 (a), Pr.Geo.Co. Code (1999 ed. & 2003 supp.).

These findings requirements apply to the Board of Appeals, which hears and decides most variance cases in the County, and they also apply to the Zoning Hearing Examiner, the Planning Board, and the District Council, when variance requests accompany

applications decided by Examiner, Board, or Council. The cited lot coverage restriction is mandatory, and it applies to the subject property. A variance request not meeting the three quoted requirements in § 27-230 (a) cannot be approved by Planning Board or District Council.

Addressing the requirements in reverse order, the Council agrees that the applicant's request is generally in conformance with paragraph (3) of § 27-230 (a), as the record seems to show no substantial "impair[ment]" of Master or General Plan. Multi-family housing, particularly affordable housing for seniors, is in short supply in the Upper Marlboro area, and this proposal by a community development corporation meets the Master Plan recommendation that such housing be provided.

But the hardship requirement in paragraph (2), as quoted above, is not met, because the applicant's lot coverage problem may be eliminated simply by reducing the size of the building. The consequent reduction in unit count will have adverse economic consequences, but such losses would not constitute "hardship," within the meaning of Maryland variance cases. *E.g., Cromwell v. Ward*, 102 Md.App. 691, 651 A.2d 424 (1995); *see generally Belvoir Farms Homeowners Ass'n v. North*, 355 Md. 259, 734 A.2d 227 (1999) (reviewing conventional and Critical Area variance standards). Moreover, the alleged hardship is self-created, and it cannot be the basis for a favorable finding under subsection (a) (2). *North v. St. Mary's County*, 99 Md.App. 502, 621 A.2d 1175 (1994). The applicant's hardship is self-created in the sense that the applicant simply decided, before filing the application, that it would show 172 units in the complex, the maximum number, according to staff, allowed on this property. (The unit count condition was imposed in an earlier site plan case, for this and an adjacent parcel.) If the applicant had been satisfied with and shown a building and other covered areas meeting the 30% coverage limitation in the

Zoning Ordinance, then the hardship issue would never have come up, in staff's, Board's, or Council's review.

Finally, and most important, there is no evidence at all to support a finding of uniqueness, as required in paragraph (1) of § 27-230 (a). The only unique physical or topographical conditions the applicant can point to are steep-slope and similar construction-limiting characteristics on parts of the property, almost nine acres in area. Staff and applicant concede, however, that the steep slopes and other difficult property conditions do not limit the buildable area on the property, for purposes of the proposed apartment complex. In other words, the unique steep slopes and similar conditions do not result in a hardship by limiting to less than 30% the amount of buildable area on the property.

In summary, the applicant failed to prove that its property has unique characteristics or that compliance with the 30% requirement in the Zoning Ordinance creates a hardship. For these reasons, the variance request must be denied, and the Planning Board's approval of the variance must be reversed.

Approval of the apartment complex concept, as shown in the applicant's site plan, is subject to the following conditions:

1. Prior to certificate approval of this detailed site plan and TCPII, the applicant shall make the following revisions:
 - a. Revise FSD to identify all severe slopes and all steep slopes on erodible soils.
 - b. Identify the location of the proposed off-site woodland mitigation.
 - c. Delete any reference to Section 4.3 (b), Perimeter Landscape Requirements.
 - d. Increase the width of the emergency lane to 20 feet. The lane shall also be painted and with a “no parking at any time” sign(s) per the requirements of the Fire Department.

2. The applicant and the applicant's heirs, successors and/or assignees shall provide the following:
 - a. Construct six-foot-wide, concrete hiker/biker trails along the subject property's entire frontages of Grandhaven Avenue and Heathermore Boulevard, in conformance with Condition 7 of approved SP-87086.
 - b. Construct eight-foot-wide, asphalt hiker/biker trails across the southern edge of the property, as shown on the Subregion VI master plan. This trail can be located in the woodland reforestation area just south of the proposed parking lot. This trail shall be within a public use easement on HOA land. If site topography allows, the eastern end of this trail shall connect to the southeast corner of the parking lot.
3. Prior to the issuance of any building permits:
 - a. The applicant shall satisfy the Prince George's County Fire Department in regard to compliance with the applicable fire prevention regulations and treatment of the emergency vehicle lane. The detailed site plan shall also be revised to reflect any change that may be required by the Fire Department's approval.
 - b. An off-site woodland conservation easement shall be recorded and submitted to the Environmental Planning Section for review.
4. The owner of Parcel B shall construct the extension of Heathermore Boulevard (or any portion required by the Department of Public Works and Transportation) from Grandhaven Avenue to the middle of the PEPCO right-of way when:
 - a. Any grading or building permits are approved for developments of parcels abutting the proposed north side of Heathermore Boulevard, east of Grandhaven Avenue, or
 - b. Construction of Heathermore Boulevard beyond the PEPCO right-of-way or across the Conrail right-of-way is undertaken.
5. Prior to the issuance of any building permit, the applicant, his heirs, successors and/or assignees, shall pay to Prince George's County the following pro-rata share of costs for the construction of the Heathermore Boulevard Extension:
 - a. \$155.10 per dwelling unit X Engineering News-Record Highway Construction Cost Index (at time of payment)/Engineering News-Record Highway Construction Cost Index (2nd quarter 1993).

- b. The total fee shall not exceed the amount calculated as
 $\$12,408.00 \times \frac{\text{Engineering News-Record Highway Construction Cost Index (at time of payment)}}{\text{Engineering News-Record Highway Construction Cost Index (2nd quarter 1993)}}$.

Ordered this 8th day of March, 2004, by the following vote:

In Favor: Council Members Knotts, Dean, Dernoga, Exum, Harrington, Peters and Shapiro

Opposed: Council Member Bland

Abstained:

Absent: Council Member Hendershot

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: _____
 Tony Knotts, Chairman

ATTEST:

 Redis C. Floyd, Clerk