

STANDARD APPLICATION

Harford County
Board of Appeals
Bel Air, Maryland 21014

JUL 16 2008

Case No. 5670

Date Filed 7/11/08

Hearing Date

Receipt

Fee 450.00

Shaded Areas for Office Use Only

Type of Application

- Administrative Decision/Interpretation
- Special Exception
- Use Variance
- Change/Extension of Non-Conforming Use
- Minor Area Variance
- Area Variance
- Variance from Requirements of the Code
- Zoning Map/Drafting Correction

Nature of Request and Section(s) of Code

CASE 5670 MAP 58 TYPE Variance ELECTION DISTRICT 01

LOCATION Burnt Hill Trail and English Ivy Court, Aberdeen

BY Hollywood Partners, LLC., 15 W. Aylesbury Road, Suite 700, Timonium 21093

Appealed because a request to modify existing condition No. 8 of Board Case 2750.
requires approval by the Board.

NOTE: A pre-conference is required for property within the NRD/Critical Area or requests for an Integrated Community Shopping Center, a Planned Residential Development, mobile home park and Special Exceptions.

Applicant/Owner (please print or type)

Name HOLLYWOOD PARTNERS, LLC Phone Number 410-560-1402

Address 15 W. AYLESBURY ROAD, SUITE 700, TIMONIUM, MD 21093
Street Number Street City State Zip Code

Co-Applicant NONE Phone Number

Address
Street Number Street City State Zip Code

Contract Purchaser NONE Phone Number

Address
Street Number Street City State Zip Code

Attorney/Representative ALBERT J.A. YOUNG Phone Number 410-838-5500

Address 200 S. MAIN STREET, BEL AIR, MD 21014
Street Number Street City State Zip Code

Land Description

Address and Location of Property OFF BURNT HILL TRAIL AND ENGLISH IVY COURT
LOCATED IN ABERDEEN, MD, HOLLYWOODS SUBDIVISION

Subdivision HOLLYWOODS Lot Number N/A

Acreage/Lot Size APPROX 30 AC Election District 1-20 Zoning R-3
part of P-580

Tax Map No. 58 Grid No. 3B Parcel part of P-395 Water/Sewer: Private _____ Public X

List ALL structures on property and current use: UNIMPROVED

Estimated time required to present case: 1 HOUR, WITHOUT OPPOSITION

If this Appeal is in reference to a Building Permit, state number N/A

Would approval of this petition violate the covenants and restrictions for your property? NO

Is this property located within the County's Chesapeake Bay Critical Area? Yes _____ No X

If so, what is the Critical Area Land Use designations: _____

Is this request the result of a zoning enforcement investigation? Yes _____ No X

Is this request within one (1) mile of any incorporated town limits? Yes _____ No X

Request

SEE ATTACHED

Justification

SEE ATTACHED

If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)

**BOARD OF APPEALS ZONING APPLICATION
HOLLYWOOD PARTNERS, LLC**

Request

The subject property was part of Board of Appeals Case No. 11-8/80, in which the previous owner, Victor Posner, received a reclassification of 313 acres from A-1 to R-3. The previous owner also requested a community development project in Board of Appeals Case No. 2750, which was part of a large project approving the construction of 1,600 units comprised of 850 apartments and 750 townhouse and multiplex units known as the Hollywoods Subdivision. The Hearing Examiner's Decision was issued on October 13, 1981. Condition No. 8 in the opinion requires that: "The apartment proportion of the development shall be no less than one-third of the total development." The Request in this Application is to modify that sentence to provide that: "The apartment proportion of the development shall be no less than one-fifth of the total development."

Justification

Given the current stage of development of the project, the requirement that no less than one-third of the total development be constructed as apartments, would require that almost all of the balance of the project now be constructed as apartments. In short, in the 27 years since the decision was rendered – things have changed. The community has developed, the nature of housing has changed, and the nature of the development has been more firmly established. The developer, the builder, and the Applicant, as well as the Department of Planning and Zoning, no longer believe it is in the best interest of the community, nor consistent with planning principles, to **require** the balance of the development to be constructed as apartments. It is for that reason that the Applicant has requested the modification of the sentence in Condition No. 8.

RE: PETITION TO REZONE 313 ACRES FROM	*	BEFORE
A-1 TO R-3 AND REQUEST FOR COMMUNITY	*	THE ZONING HEARING EXAMINER
DEVELOPMENT PROJECT APPROVAL; n/s Rt. 7,	*	OF HARFORD COUNTY
west of Stepney Road, adjacent to the	*	Case No. <u>11-8/80 and 2750</u>
nw/quad. of the int. of Philadelphia and	*	Hearing Advertised:
Stepney Rds., bounded by Gray's Run on	*	Aegis: 3/12/81 & 3/19/81
the east	*	Record: 3/11/81 & 3/18/81
APPLICANT: Security Management, Inc.	*	
HEARING DATE: April 13, 1981, etc.	*	

* * * * *

ZONING HEARING EXAMINER'S DECISION

The applicant is Security Management, Inc. The applicant has requested a reclassification of 313 acres from A-1 (Agricultural) to R-3 (Multi-Family Residence District) in Cycle II, Case 8, 1980. The applicant has also requested a Community Development Project under the provisions of Section 10.03 and 17.3 in Board of Appeals Case #2750.

The Community Development Project requests approval to build on the property 1600 units comprised of 850 apartments and 750 townhouse/multiplex units.

The subject property is located in the First Election District and is situated west of Stepney Road, north of and abutting Maryland Route 7 and south of and abutting Interstate Route I-95.

The applicants called Mr. William F. Kirwin, who qualified as an expert witness in the field of land planning. Mr. Kirwin identified the neighborhood which he had chosen for the purposes of demonstrating the substantial change in the character of the neighborhood since the last comprehensive zoning of the County in 1957. Mr. Kirwin identified the neighborhood by a dashed line on Applicant's Exhibit No. 1. The neighborhood was bound on the south by U.S. Route 40, on the east by the corporate limits of the Town of Aberdeen, on the north by the John F. Kennedy Memorial Highway (Interstate 95) and on the west by Belcamp Road.

The witness said that I-95 was chosen as the northern boundary of the neighborhood because it is a multi-lane, controlled access, toll interstate highway. He said that it is a distinct physical barrier separating the properties to the north from the subject property.

The corporate limits of the Town of Aberdeen was chosen as an easterly boundary of the neighborhood for two reasons. First, it is readily recognizable and specifically and physically identified as a boundary, and second, it separates the municipalities of Harford County and the Town of Aberdeen which have distinct and separate governments and zoning laws.

Maryland Route 40 was chosen as the southern boundary of the neighborhood because it is a four-lane improved highway with a closed median and has long functioned as a major east/west traffic route. Also, because of the intense commercialization along

Route 40, it is a demarcation line between the residential neighborhood to the north and south of the highway.

The western boundary of the neighborhood is Belcamp Road because it is the first road to the west of the subject property which crosses over Route I-95 and represents an important traffic conduit from Route 40 to the north.

After establishing a neighborhood, Mr. Kirwin testified that the following rezonings have occurred within the neighborhood since 1957:

1. Bata Land Company, Inc.
A-1 and M-2 to R-3 -- Case #I-6/75 -- 418 acres -- decided 7/26/76
A-1 to M-2 -- Case #I-10/75 -- 370 acres -- decided 7/26/76
2. Edwin Coleman
A-1 to R-1 -- Case #I-1/74 -- 15 acres -- decided 10/22/74
3. Nicholas Paulis
A-1 to M-1 -- Case #6-M-4 -- 16 acres -- decided 9/20/66
4. Paul Seward
A-1 to M-1 -- Case #6-D-7 -- 9.63 acres -- decided 3/8/71
5. Charlotte Harmony
A-1 to B-1 -- Case #6-W -- 19.3 acres -- decided 1/16/61
6. Ward Vaughn
B-1 to B-3 -- Case #6-B-8 -- 1.82 acres -- decided 12/19/72
7. Cook and Morgan
M-2 to M-1 -- Case #6-G-3 -- 2.75 acres -- decided 1/10/66
8. Emery and Barbara Cook
M-2 to M-1 -- Case #6-F-4 -- 2 acres -- decided 7/13/66
9. Leonard Mink
M-2 to M-1 -- Case #6-A-8 -- 0.95 acre -- decided 12/19/72
10. Williams and Riden
A-1 and M-1 to M-2 -- Case #I-17/75 -- 110.83 acres -- decided 7/14/76
11. Paul Seward
A-1 to M-1 -- Case #6-E-7 -- 86.94 acres -- decided 3/8/71

In addition, Mr. Kirwin testified that the construction of the John F. Kennedy Memorial Highway (I-95) and the addition of sewer and water lines in the area have also changed the character of the neighborhood.

The witness also testified that the uses permitted under the existing A-1 classification and Master Plan designation would not protect the environmental features of the subject property and would, in fact, continue to adversely affect the neighborhood. Specifically, Mr. Kirwin testified that under the A-1 classification the applicant is restricted to agricultural use, woodland production and certain restrictive residential uses. He stated that, in his opinion, agricultural uses

including timbering was not feasible and further stated:

"This site, because of the diverse topography, the 175 foot difference between the low to the high area, the fact that we have stream valleys, erodible soils, numerous rock outcroppings, unlimited access off of Route 7, the question then is that it has a low capacity factor and definitely is not suited for agricultural purposes. It is not suited for tilling at all because of the soil and rock outcroppings. It is not even suited for the timbering process because the timbering, as an agricultural use, that went on in the past started as the result of a mature stand of trees. And it was selectively timbered. There has been no management from a standpoint of replanting a timberable crop on that site, so given those two factors, the agricultural use of that land is definitely not a viable use."

Mr. Kirwin also stated that he concurred with the opinion of the Department of Planning and Zoning in that the R-3 zoning with a CDP was the most effective means of protecting the natural features of the property, in that the present zoning did not properly place into effect the most beneficial use in order to protect the natural features of the subject tract.

Mr. Kirwin went on to testify with respect to the Community Development Project and introduced a concept plan as Applicant's Exhibit No. 10, which showed the portion of the property to be developed, the internal road system, the flood plain and buffer areas, abutting streams on the site, with the steeper slopes remaining undeveloped and the recreational areas. The witness said that 131 of the total 313 acres would actually be developed with 60 percent of the land remaining as open spaces. The witness said that any traffic noise emanating from Route I-95, north of the subject property, would be buffered by the adjoining 45 acres of woodland. This woodland will protect the steeper slopes adjacent to Route I-95 right-of-way and will insure traffic noise levels will be well within acceptable limits for residential use. He also said the stream valleys will be protected by buffer areas along the stream courses. Buffer areas will have a width of 150 feet from the center line of Gray's Run on each side and are equal to or more than the areas recommended by the Maryland Department of Natural Resources in order to protect the water courses on the property and the properties downstream from the subject property. The minor and intermittent stream will have a buffer area having a width of 50 feet from the center line of the stream on each side which is more than adequate to insure water quality and to prevent sediment through erosion. Mr. Kirwin also said in order to protect the environment, a housing mix has been chosen and located on the site so the minimum of grading will be necessary during development.

Mr. Kirwin further testified as to the planned net density assuming 131 buildable acres. Townhouse units for sale will have a density of 8.5 dwelling units per acre

and the apartments for rent/multiplex units will have a density of 14.2 dwelling units per acre. The extent to which the applicant intends to preserve environmental values on the site was illustrated by Mr. Kirwin's testimony that a far greater number of units; that is; i.e., 1920 units could be built under the Harford County Zoning Ordinance.

Mr. Kirwin said that the applicant wanted to make a complete clean up and stabilization of the subject property as development progresses, and that it will comply with any requirements, of the County and State.

Mr. Kirwin said that the applicant has met extensively with the Department of Planning and Zoning in order to formulate an active and passive recreational plan. As a result of the meetings, an agreement was reached having specific active and passive recreation areas. Applicant's Exhibit No. 29 showed a recreational plan with the approximate location of tot lots, baseball fields, tennis courts, swimming pools and related facilities as well as passive recreational areas such as the steeper slopes and stream valleys. It further shows an area suitable for baseball fields adjoining Maryland Route 7 to be conveyed to the Department of Parks and Recreation.

Mr. Rene L. Herbst, Jr., appeared and qualified as an expert in the field of geology. Mr. Herbst's report on the soils and geology of the subject property was introduced as Applicant's Exhibit No. 4. The witness said that based on his evaluation and study of the subject property, that agricultural use of the subject property was not appropriate.

Mr. John W. Guckert appeared and qualified as an expert in the field of traffic engineering. Mr. Guckert prepared a written report which was introduced as Applicant's Exhibit No. 16, entitled "Traffic Impact Analysis for Holly Woods Development, Revised January, 1981". The analysis was accompanied by a traffic report addendum updating the previously submitted traffic report in light of a shift in the mix of units occurring after January, 1981. The addendum was accepted into evidence as Applicant's Exhibit No. 16A. The report was based on projected directional percentages, actual peak hour traffic counts, trip generation and distribution data and observation of turning movements at the critical intersections in the neighborhood. Mr. Guckert chose a "worst case" factual situation being in excess of that contemplated by the Applicant and stated what road improvements would be required to maintain acceptable levels of service on the several roads involved in the study. He considered projected volumes of traffic generated by Riverside, growth along Maryland Route 24, and on the subject site. Applicant's Exhibit Nos. 17, 18, and 19 specifically set forth the needed roadway improvements. Mr. Guckert expressed the opinion that use of the site

as proposed will not have an adverse impact on the road system as long as the recommended improvements are made. Mr. Guckert further testified that the road improvements will be the responsibility of the developer, even though the traffic generated on the site will be a minority contributor to traffic volumes at each of the intersections shown in Exhibit Nos. 17, 18 and 19. Mr. Guckert said that the applicant has agreed to make the necessary improvements on a stage basis keyed to the full build-out of the subject property.

Mr. Douglas Porter appeared and qualified as an expert in the field of fiscal analysis. Mr. Porter prepared and filed as Applicant's Exhibit No. 15 a report entitled "Fiscal Impact Analysis - Holly Wood Development". Mr. Porter testified that he had estimated the revenues to Harford County from the construction of the development and then estimated the public cost as a result of the same development. Mr. Porter stated that he used the FISCALS computer model to determine the impact of the development on Harford County, and whether it would have a beneficial or detrimental effect on the County. As a result of the analysis, Mr. Porter testified that in his expert opinion and based on the computer model which has been accepted into use nationwide, there would be a surplus in the first year of \$213,000 and that the revenues over cost during the first 20 years of the project would be \$2.3 million. In addition, there would be a \$34,000,000 increase in the taxable base of the County at the time of completion of building on the subject property.

Dr. John T. Cookson, Jr., appeared and qualified as an expert in the field of environmental engineering. Dr. Cookson prepared a report entitled "Environmental Assessment of Proposed Development of Holly Woods, Harford County, Maryland", which was introduced as Applicant's Exhibit No. 22. Dr. Cookson said particular emphasis was placed on examination of water quality in that the air and noise environmental parameters are clearly not jeopardized by the type of development proposed. Dr. Cookson discussed and illustrated with slides the present condition existing on the site and the significant environmental degradation that has occurred prior to the purchase of the subject property by the applicant. The slides showed massive cuttings that have taken place and the resulting clogging and sedimentation of streams which now is occurring. The slides also demonstrate the present shortage of mature timber on the land and illustrates that the remaining timber is basically secondary growth.

With regard to Church Creek, Dr. Cookson concluded that the development of the site would have no detrimental effect on the water quality of Gray's Run, and, since Gray's Run flows into Church Creek, there will be no detrimental effect on the water quality of Church Creek, its marshes or on Bush River. The basis for Dr. Cookson's

opinion on water quality is the 150 foot buffer zone which has been agreed to by the applicants along Gray's Run and the fact that the subject property will be served by public water and sewer. Dr. Cookson went on to point out that the State Planning report was in total and complete error in expressing concern over development along the steep slopes because the site plan submitted by the applicants clearly showed that development of the subject property would not include development on the steep slopes.

Mr. William R. Sudeck appeared and testified as an expert in the field of engineering. Mr. Sudeck testified as to storm water management facilities to be provided by the applicants during and after construction of dwellings on the subject parcel. The storm water management facilities would collect surface water runoff and retain it to be released at a fixed rate and to flow into streams at a pre-development rate. The particular devices to be used by the developer would be four holding ponds on the site which would contain a time release structure in order to control the release of retained water. In the opinion of Mr. Sudeck, the storm water management facilities required by the County will protect the properties on the site and down stream from any damage from storm water during and after construction.

Mr. Sudeck further testified as to the present status of the existing public facilities for the treatment and transmission of sewage generated on the subject property. The witness said a 14-inch main exists in the roadbed of Maryland U.S. Route 40 which runs east from Bush Creek Pumping Station along U.S. Route 40 to Belcamp Road where it turns into a gravity sewer terminating at the Church Creek Pumping Station. From the Church Creek Pumping Station, a force main runs southwest to the Sod Run Wastewater Treatment Plant. Mr. Sudeck said that during construction of the Maryland House on I-95, in the early 1960's, an 8-inch sanitary sewer was constructed, running from the Maryland House southwest through the subject property to the Church Creek Pump Station. The line flows by gravity from the Maryland House to the pumping station. The witness said that the majority of sewage to be generated by the subject parcel will flow through this 8-inch sewer line. Mr. Sudeck testified that any additional flow generated by the site would result in the applicant constructing, at its own expense and subject to approval and inspection of Harford County, a sewer line parallel to the existing 8-inch line. Mr. Sudeck expressed the opinion that there was sufficient sewer facilities existing and planned to serve the subject property and all other subdivisions in the County presently having existing Public Works Agreements.

Mr. Sudeck also testified regarding the County's ability to supply the facility with water. The witness said the County has three sources of water. The present source is the Perryman well field located in Perryman close to the subject property. The Perryman well fields are presently the sole source of water and could, if necessary, be expanded to provide additional water to the County. The County has also entered into an agreement with the Town of Aberdeen wherein it has the right to purchase from the town up to 500,000 gallons of water per day. The County has also entered into an agreement to construct, operate, and maintain water facilities in Harford County and Havre de Grace, Maryland. The agreement provides for the expansion of the existing Havre de Grace water facilities to provide up to 20 million gallons of water to Harford County as needed. Mr. Sudeck testified that there is existing and planned sufficient capacity and facility for providing of water to the subject tract and that there will be no detriment to the citizens of Harford County as a result of construction on the subject property.

Mr. Sudeck further testified regarding solid waste disposal, that there exists three landfills in Harford County. In addition, he stated that \$1.7 million is presently in the budget for the purpose of purchasing an additional site. The applicant introduced an executed copy of the Northeast Maryland Regional Solid Waste Management Agreement which provides for regional treatment of solid waste.

Mr. Guy W. Hager, Director of the Department of Planning and Zoning, appeared and testified that the staff has defined the neighborhood of the subject property as bordering on I-95 on the north, Maryland State Route 136 to the west, U.S. Route 40 to the south and Cranberry Run to the east. Mr. Hager further testified that, based on this neighborhood, the staff felt that there was substantial change within the character of the neighborhood to justify the rezoning.

Mr. Hager also testified that the staff recommends approval of the Community Development Project provided that the conditions outlined in the Staff Report are imposed.

Mr. Hager also testified with concern to the Master Plan. The director said that the 1977 Land Use Map designates the subject parcel as a Natural Features Protective Area with residential use limited to 3-5 acre sites. The witness said that compliance with the Master Plan is of concern to him with regard to the compatibility of intense residential development versus conservation and protection of natural features of the site. Mr. Hager concluded that the development as proposed and modified by the applicant and conditions suggested in the Community Development Project report will work to protect the natural features of this site and achieve the intent of the Master Plan.

Pursuant to Article 86-C, Section 2(R), of the Annotated Code of Maryland, the State Department of Planning intervened into this case and introduced evidence that the proposed application is premature and would adversely affect the ability of both the County and State to effectively control growth and provide public facilities, such as highways and schools. The State also expressed concern over the environmental impact on the Church Creek marsh.

Several area residents did appear and testify in opposition to the requested application. Mr. Mark Kregel appeared and testified that a survey he conducted revealed that several other large tracts of land surrounding the subject parcel are owned by the principals of Security Management. Mr. Kregel expressed concern that the rezoning of this parcel would set a precedent for surrounding lands. He also questioned governments ability to service the proposed subdivision as well as surrounding shopping areas and other required conveniences to absorb the additional population.

Mrs. Grace Terry testified that she felt that the proposed development would have a detrimental effect on her property and her peace and quiet enjoyment of the property.

Mrs. Dorothy Gerber testified that she was concerned over an increase in crime that a high density development might bring.

Mr. Richard Green showed a number of slides of the area which he took both from ground level and from the air. This witness testified that the photographs show that the area is largely wooded and agricultural land. The protestants asked for the opportunity to have the slides printed into photographs and then submit the photographs as exhibits. The attorneys representing the applicants agreed and the Hearing Examiner allowed 14 days for submission of the photographs. The photographs have not been received and cannot be considered as an exhibit since the record is now closed.

CONCLUSION:

The burden of proof is on an applicant in a rezoning case in which it attempts to demonstrate change in the neighborhood to justify the rezoning. In the case of Rockville v. Stone, 271 Md. 655, the Court said:

"in demonstrating change in the neighborhood, the applicant must show

(a) what area reasonably constitutes the "neighborhood" of the subject property,

(b) the changes which have occurred in that neighborhood since the comprehensive rezoning and

(c) that these changes resulted in change in the character of the neighborhood."

In Montgomery v. Board of County Commissioners for Prince George's County, 263 Md. 1, the Court said "that in rural or semi-rural areas, the neighborhood is going to be larger and more fluid than in a city or suburban areas". During the testimony, the applicants established a neighborhood as outlined above through the testimony of Mr. William Kirwin. Mr. Guy Hager also established a neighborhood when testifying on behalf of the staff. These neighborhoods are basically similar in alignment although the staff's neighborhood is somewhat larger than that as outlined by the applicant's witness. The State Department of Planning did not identify a neighborhood nor did the protestants.

The Hearing Examiner finds that the neighborhood of the subject parcel is that as defined by Mr. William Kirwin in his testimony/^{and}for the reasons as set forth in Mr. Kirwin's testimony.

Once the applicants have established a neighborhood, the burden remains with the applicants to show what changes have occurred since the last comprehensive rezoning and that the changes result in a substantial change in the character of the neighborhood. The Hearing Examiner finds that based on Mr. Kirwin's testimony as to twelve separate rezonings, each have occurred within the neighborhood, the construction of the John F. Kennedy Memorial Highway, and the introduction of water and sewer to the neighborhood has substantially changed the character of the neighborhood. Section 20.42 of the Zoning Ordinance sets forth limitations, guides and standards for the granting of a conditional use. After having heard the testimony, and reviewed the evidence and exhibits contained in the file, the Hearing Examiner finds that a properly conditioned approval would not have a detrimental impact on the growth of the community. Therefore, the Hearing Examiner recommends approval of the rezoning from A-1 to R-3 based on substantial change in the character of the neighborhood and recommends approval of the Community Development Project subject to the following conditions:

1) Stream Valleys: The applicant shall provide restrictive covenants to run with the land so that development or tree removal, with the exception of damaged or diseased vegetation and pedestrian facilities, shall not be permitted within the stream valley buffer areas. The stream valley buffer areas shall be designated as community open space to be owned and maintained by the community association. The stream valley buffers shall be as substantially shown on the illustrative site plan with a 150-foot buffer on each side of the two (2) major streams (i.e., Gray's Run and its major tributary), and a 50-foot buffer on each side of the banks of all other surface running streams. If either the 150-foot or 50-foot stream buffer does

not encompass the 100-year flood plain, the outer boundary of the buffer will be the 100-year flood plain, or whichever boundary has the greatest distance from the stream.

2) Flood Plain Management/Sediment Control/Storm Water Management: The applicant shall be required to follow all applicable County and State regulations related to flood plain, sediment and storm water control.

3) Forest Management: The applicant shall work closely with the Department of Natural Resources and the Maryland Forest Service in determining which trees should be saved in the respective development areas. The applicant shall submit a preliminary site development plan for each development area at the time of subdivision approval for that particular development area to the Department of Planning and Zoning for its review indicating the groups of trees to be saved, together with a landscaping plan identifying the restoration, landscaping and rehabilitation of graded land.

4) The applicant shall submit a grading plan to the Department of Public Works together with a copy of preliminary site development plan as approved by the Department of Planning and Zoning. The grading plan shall conform to the preliminary site development plan and meet the following requirements:

a) Grading should be shaped to complement natural land forms; padding or terracing of building sites shall be prohibited. No mass grading of the site shall take place.

b) Paving and stabilization shall be accomplished as rapidly as possible after grading.

c) Grading and other site preparation should be minimized by orienting the development to be in harmony with the natural features of the site.

d) Slopes of 12% and greater shall not be disturbed for parking areas or residential units but can be used for the road system. Disturbance of slopes greater than 10%, but less than 12%, shall be minimized.

e) Areas around structures should be landscaped so as to blend with the existing natural landscaping.

f) Hilltops shall not be graded, leveled or cut off on top.

g) Stockpiling of earth and spoil material shall not be permitted for longer than one year. No top soil should be removed from areas except those intended for structures or to be covered by man-made improvements. The top soil removed from such areas shall be re-distributed within the boundaries of the lands in question so as to provide a suitable base for seeding and planting.

h) Soils which are shown as having severe construction limitations as defined by the Harford County Soil Survey shall not be built upon.

5) Existing Problems of Erosion Control - The applicant shall meet with representatives of the Soil Conservation Service to formulate a plan for the remedy of existing problems on the site. These problems relate to soil erosion resulting from logging roads, trees blown down, and erosion or skid trails. The plan shall require that the applicant remove material presently utilized as stream crossings and stabilize the areas adjacent to present existing stream crossings. The plan shall also require that the applicant stabilize other areas of the property which significantly contribute to the sedimentation from the site. The applicant shall notify the Department of Planning and Zoning of Soil Conservation approval of the plan.

Further remedial measures shall be incorporated into the preliminary site development plan required by the condition above and shall include measures to remove down timber within the development area occurred by the preliminary site development plan and any adjacent open space. Remedial measures incorporated within the preliminary site development plan shall be phased to the completion schedule for the first building permits issued within that particular site development area.

6) Site Planning - Construction, development, and landscaping of the tract shall be substantially in accordance with the overall site plan and typical site plans and sections on drawings labeled, "Apartments", "Townhouses", "Multiplex", that have been submitted to the Department of Planning and Zoning and accompanying the tabulations.

7) Site Plan Changes - Changes are aimed at reducing development on steep slopes, reducing development coverage of the site, distributing open spaces in a more accessible fashion and further protecting stream valleys:

a) Development area no. 3 on the applicant's site plan is to be removed from its present location and be absorbed within recreation area no. 7.

b) The recreation space in area no. 7 so displaced by no. 1 is to be located in development area no. 6, which is to become open spaces with part in active recreation and part in passive, the passive portion located adjacent to Gray's Run stream valley. Storm water management for the entire site is not to be concentrated in area no. 6, but is to be distributed in several locations throughout the site.

c) All development in area no. 6 is to be absorbed within areas no. 4 and 5, where net density, once this absorption has been accomplished, shall still remain at no more than 8.5 dwelling units per acre indicated by the applicant.

8) The total number of units to be constructed shall under no circumstances exceed 1600, irrespective of the unit type mix. The apartment proportion of development shall be no less than one-third of total development. In the event that shifting of units takes place, building coverage, setbacks and open space standards shall not decline below those indicated on the typical site, cluster and sectional plans for the unit types submitted by the applicant.

9) Development Density: The applicant's intention to construct apartments with a net density of 14.3 dwelling units per acre and townhouse/multiplexes a net density of 8.5 dwelling units per acre is consistent with accepted design standards for those kinds of units and with comparable developments approved elsewhere in the County.

These net densities are not to be exceeded within the development areas indicated on the applicant's site plan within areas nos. 1, 2, and 3 are to be developed for apartments, and areas nos. 4, 5 and 6 are to be developed for townhouses/multiplexes.

10) Parking Requirements: The following parking standards shall apply:

1.75 spaces per apartment unit

2.00 spaces per townhouse/multiplex unit

11) Recreational Facilities: The developer shall submit a recreation facilities plan for the site, phased in accordance with the development program, to be reviewed and approved by the Department of Parks and Recreation and by the Department of Planning and Zoning. The plan shall include location and size of proposed recreation facilities and other on-site amenities such as tennis courts, ball fields, swimming pool, community meeting facilities and multi-purpose courts. The plan shall be based on nationally accepted recreation standards provided by the Department of Parks and Recreation. Meaningful active recreation areas and facilities within each development area identified on the site plan shall be provided and made available or substantially completed for use by the residents to coincide with the residential occupancy in that area before other development phases/sections may be approved to proceed, or alternately, a bond shall be posted with the County to insure provision of recreation facilities. Facilities approved for the central recreation area, indicated as located on the site plan as Section 7, must have these recreational facilities developed prior to completion of 75% of the total residential units.

12) Open Space at East Access Point - The area adjacent to Route 7 on the eastern access point to the site shall be maintained as a major natural protective area with minimum active recreation, either by the community association or other

public or private institution. The applicant shall provide an option for three years following commencement of development for the County Department of Parks and Recreation to acquire through dedication of fee simple rights said area for public park absent any storm water management facilities.

13) Pedestrian Circulation: A pedestrian circulation plan shall be submitted by the applicant to the Department of Planning and Zoning for review. . Pedestrian network shall interconnect the various sections of the development and shall be integrated into the recreational and open space areas to include a pathway/trail system along the stream valleys. Pedestrian crossings over the streams will be constructed where appropriate.

14) Required Improvements and Development Phase/Traffic: The traffic impact identified by the applicant's study, which are expected to occur within a five-year time frame, require the following road improvements for a level of service "D" or better to result:

- a) Route 7/Route 24
 - 1) Construct southbound left-turn lane along Route 24.
- b) Route 7 and Belcamp Road
 - 1) Construct northbound right-turn lane along Belcamp Road.
 - 2) Construct westbound left-turn lane along Route 7.
 - 3) Construct eastbound right-turn lane along Route 7.
- c) Route 7 and Route 40
 - 1) Widen north approach of Route 7 and provide for two lanes approaching Route 40.
 - 2) Mark pavement to permit double left-turn southbound Route 7 to eastbound Route 40.
 - 3) Adjust signal phasing to accommodate improvements.
- d) Route 7 and Site Access Location
 - 1) Construct eastbound left-turn lane along Route 7.
 - 2) Construct westbound turn lane along Route 7.

The applicant is responsible for cost of these improvements. Improvements shall be constructed according to a schedule which shall be geared to the issuance of building permits. All required improvements shall be in accordance with Maryland Department of Transportation standards and Harford County Department of Highways standards.

15) Planning of Collector Roads: A major collector road of the development indicated on the modified site plan submitted is to have no individual driveway access points intersecting it except to accommodate existing dwellings off site and no dwelling units are to be oriented directly towards it. Roads shall intersect with

the major collector and these will serve development private parking area access directly. No parking shall be permitted on either the major or local collector roads. Backyards are prohibited from backing onto the major collector roads and are to be discouraged from backing onto local collector roads. Where the latter situation is unavoidable, adequate screening is to be provided.

16) Recreational Vehicles: The applicant shall provide restrictive covenants so that motorized recreational vehicles, such as motorcycles, mini-bikes, and/or dune buggies, shall be banned from the stream valley buffers, protected steep slopes and other open spaces and recreational areas. It is important to preserve the natural vegetation cover on the slope and in the stream valleys. The applicant shall set aside a designated area to be used exclusively for the parking and storage of recreational vehicles to include, but not limited to, boats, campers, and recreational vehicles. The developer at his option may designate more than one such area to be located wherever the need exists.

17) Community Development Project: The developer shall not be permitted to abandon the Community Development Project and build a conventional "R-3" development without receiving Board of Appeals approval/or the applicant shall covenant to the Community Association impacted by this development that the Community Development Project will not be abandoned in favor of a conventional "R-3" development.

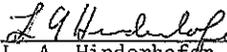
18) Public Facilities: The developer shall be required to connect all residential units to Harford County public water and sewer.

19) Community Association: A homeowners association agreement shall be prepared by the applicant and shall be subject to review and comment by the Harford County Department of Planning and Zoning and the Harford County Department of Law. It shall provide, among other things, the maintenance of open space, and shall apply to all dwelling units. Language resolving questions of title and giving each homeowner a right of enjoyment in the common areas shall appear on the face of the subdivision plat. Each homeowner will possess a right to enjoy the common open space and each property will be charged with its share of the obligation of maintaining it. The legal arrangement must not admit of any early changes which would withdraw this right of enjoyment and so terminate the corresponding obligation on the part of every homeowner to contribute to their maintenance. Moreover, the designated common open space may not be withdrawn and put to some other use, and an irrevocable commitment is required of the common open space areas to their intended use. Language to save the title to the common property for the benefit of the Association free and clear

of any cloud that might be cast upon it through an implied dedication to the public. Language to express a definite undertaking by the developer to convey the common property to the Association at an appropriate time. Language to express a grant of easement of enjoyment over the common property in favor of all of the home purchasers in the development and to limit such grant so as to save for the Association, unimpeded by the private rights created in each home purchaser, (a) the right to borrow money for community improvements upon the security of its title to the common property; (b) the right to suspend the enjoyment of any homeowner for any period during which the maintenance assessments remain unpaid by him, and to charge reasonable admission or other fees, if need be; (c) the right to dedicate the property to the public for public use and maintenance, if need be; and (d) the right to engage, in the event of financial distress, in other salvage operation designed to save the common property against diversion from community use.

It is required that the proposed arrangement made for maintenance shall not admit of any change by the developer or the homeowner. Additionally, it is required that a direct undertaking of the developer that the arrangements preserved for maintenance, which is presented by the recorded covenants, will not be altered.

Date: October 13, 1981



L. A. Hinderhofer
Zoning Hearing Examiner

NECESSARY PERMITS SHALL BE ISSUED BY THE DEPARTMENT OF PERMITS PENDING APPROVAL BY OTHER AGENCIES.

DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE

LORRAINE COSTELLO
DIRECTOR OF ADMINISTRATION



C. PETE GUTWALD
DIRECTOR OF PLANNING & ZONING

HARFORD COUNTY GOVERNMENT

August 28, 2008

Department of Planning and Zoning

RECEIVED

AUG 29 2008

HARFORD COUNTY COUNCIL

STAFF REPORT

BOARD OF APPEALS CASE NO. 5670

APPLICANT/OWNER: Hollywood Partners, LLC
15 W. Aylesbury Road, Suite 700, Timonium, Maryland 21093

REPRESENTATIVE: Albert J. A. Young
200 S. Main Street, Bel Air, Maryland 21014

LOCATION: Off Burnt Hill Trail and English Ivy Court – Hollywoods
Subdivision
Tax Map: 58 / Grid: 3B / Parcel: Pt. of Parcel 580 /lot: Pt. of Lot
395
Election District: 01

ACREAGE: Approximately 30 acres

ZONING: R3/Urban Residential District

DATE FILED: July 11, 2008

HEARING DATE: September 24, 2008

APPLICANT'S REQUEST and JUSTIFICATION:

See Attachment 1.

CODE REQUIREMENTS:

The Applicants are requesting to modify existing condition No. 8 in Board of Appeals Case #2750.

Preserving Harford's past; promoting Harford's future

MY DIRECT PHONE NUMBER IS (410) 638-3103

LAND USE and ZONING ANALYSIS:

Land Use – Master Plan:

The Applicant's property is located on the north side of Philadelphia Road (MD Route 7) west of Stepney Road. Enclosed with the report is a location map and copies of the record plats (Attachments 2 and 3).

The property is located within the Development Envelope. Land use designations include Medium and High Intensity and Industrial/Employment. The Natural Features Map reflects stream systems. The subject property is designated as Medium Intensity, which is defined by the 2004 Master Plan as:

Medium Intensity - Areas within the Development Envelope where residential development is the primary land use. Density ranges from 3.5 to 7.0 dwelling units per acre. Grocery stores, variety stores and other commercial uses are examples of some of the more intensive uses associated with this designation.

Enclosed with the report are copies of the 2004 Land Use Map and the Natural Features Map and the Abingdon-Riverside-Emmorton Community Area map (Attachments 3, 4 and 5).

Land Use – Existing:

The existing land uses in this area of the County are consistent with the 2004 Master Plan. There are several residential communities. In addition there are commercial and industrial uses. Other land uses include schools, churches, nursing homes, golf course, warehousing, corporate offices and motor vehicle related uses. The topography ranges from rolling to steep especially near the stream valleys. Enclosed with the report are copies of the aerial photograph and topography map (Attachments 6 and 7).

The Hollywoods development is located between Philadelphia Road (MD Route 7) to the south side and Interstate I-95 to the north. The development contains a mix of townhomes and condominiums. Enclosed with the report are copies of the site photographs and aerial photographs (Attachments 8 and 9).

Zoning:

The zoning classifications in the area are consistent with the 2004 Master Plan as well as the existing land uses. Residential zoning ranges from R1 to R3/Urban Residential Districts. Commercial zoning includes B1/Neighborhood, B2/Community and B3/General Business Districts. There are areas zoned CI/Commercial Industrial and GI/General Industrial Districts. The subject property is zoned R3/Urban Residential District as reflected on the enclosed copy of the zoning map (Attachment 10).

SUMMARY:

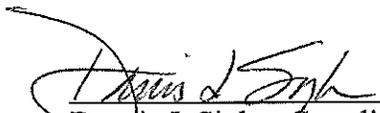
The Applicants are requesting to modify existing condition No. 8 in Board of Appeals Case #2750.

The subject property was part of Board of Appeals Case No. 11-8/80 in which 313 acres were rezoned from A-1 to R-3. The request also included approval for a Community Development Project (CDP) (Case No. 2750) (Attachment 11). The Hearing Examiner at that time approved a 1600 unit project, comprised of 850 apartments and 750 townhomes and multiplex units. The Hearing Examiners decision was issued on October 13, 1981. Condition No. 8 in the opinion requires that: "The apartment proportion of the development shall be no less than one-third of the total development." The current request is to modify that sentence to provide that: "The apartment proportion of the development shall be no less than one fifth of the total development."

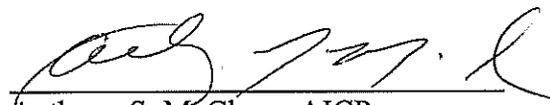
The Department recommends that the Applicant's request be approved. Housing needs within the County have and will continue to change over time. The requested modification to condition number 8 will allow better flexibility for the Applicant to meet current market conditions.

RECOMMENDATION and or SUGGESTED CONDITIONS:

The Department of Planning and Zoning recommends that the Applicant's request to modify Condition No. 8 in Case 2750 be approved.



Dennis J. Sigler, Coordinator
Zoning & Board of Appeals Review



Anthony S. McClune, AICP
Deputy Director, Planning and Zoning

DJS/ASM/jf