

APPLICANT:
Hollywood Partners, LLC

REQUEST: A request to modify
existing Condition No. 8 of Board
of Appeals Case No. 2750

HEARING DATE: September 24, 2008

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5670

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Hollywood Partners LLC

LOCATION: Burnt Hill Trail and English Ivy Court, Aberdeen
Tax Map: 58 / Grid: 3B / Parcel Nos: 580 and 395
First (1st) Election District

ZONING: R3/CDP / Urban Residential, Community Development Project

REQUEST: A request to modify existing Condition No. 8 of Board of Appeals Case
No. 2750.

BACKGROUND:

The subject property is an approximately 313 acre parcel located north of and abutting MD Route 7, west of Stepney Road and south of and abutting Interstate 95. The property is presently being developed into a combination of condominium and townhouse units known as "Hollywoods".

Hollywoods received its original approval for development by Board of Appeals Case No. 2750, decided October 13, 1981, which granted a reclassification of the property from AG/Agricultural to R3/Multi-Family Residential, and allowed development under the Community Development Project ("CDP") regulations of the Zoning Ordinance of 1957.

The CDP was allowed under the 1957 Zoning Ordinance as a conditional use, which under current Development Regulations would be considered a special development or special exception. The Applicant was required to make certain showings pursuant to Section 17.3 et seq. of the 1957 Zoning Ordinance, and was also required to show compliance with Section 20.4 of the 1957 Code, now codified with minor changes as Section 267-9I.

As a conditional use the Hearing Examiner was required to determine if any particular conditions were necessary in order to guarantee, to the extent possible, that applicable standards would be met and the pertinent provisions of the Code maintained. The Hearing Examiner, accordingly imposed a series of conditions upon his approval of the Applicant's request.

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It is Condition No. 8 of that decision for which the Applicant requests a modification:

“The total number of units to be constructed shall under no circumstances exceed 1,600, irrespective of the unit type mix. The apartment proportion of the 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 a typical site, cluster and sectional plans for the unit type submitted by the Applicant.”

The Applicant requests the following modification of Condition No. 8:

“The apartment proportion of the development shall be no less than one-fifth of the total development.”

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant first testified Rowan Glidden, employed by G.W. Stephens, Inc. Mr. Glidden was offered and accepted as an expert land planner.

Mr. Glidden stated that the Harford County Development Regulations contain no established criteria for modification of a special exception condition, with the Board of Appeals' approval in 1981 of a conditional use now being the equivalent of a special exception. However, according to Mr. Glidden, the request must nevertheless comply with Code Section 267-9I, Limitations, Guides and Standards.

Mr. Glidden explained that the request to change the mix of apartments from one-third of the total originally approved, which would have been approximately 533 units, to one-fifth of the total, or approximately 320 units, as apartments (actually to be developed as condominium units for sale), would give the developer greater flexibility to choose between both condominiums and townhouses in its build-out of the Hollywoods project. Resulting density would, in fact, be less than if the full number of apartments originally approved were developed. Mr. Glidden sees no impact on traffic or any adverse impact to either residents of the community or surrounding residents.

A Community Information Meeting was held to which the community and neighbors had been invited and whose responses and reactions to the requested modification were solicited. No significant opposition was expressed.

Mr. Glidden explained that the overall project was still in the development and construction phase, with about 500 building permits having been issued for units, although much of the property is subject to record plat. If granted approval, the developer would have the option to modify the mix of housing type on about 30 acres of the overall 313 acre tract.

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Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that the Department has received no notice of any opposition to the request. The request meets all applicable requirements, including Limitations, Guides and Standards, Section of 267-9I. Mr. McClune and the Department believe that the request is a minor adjustment from Community Development Project approval originally given in 1981 and it is doubtful that the Applicant's project will ever be constructed to maximum density.

An adjoining property owner, Grace Hiter, then expressed her lack of opposition to the requested modification.

No evidence or testimony was given in opposition.

APPLICABLE LAW:

Applicable law is discussed below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant is developing the relatively large subdivision known as Hollywoods under approval granted in 1981 pursuant to the 1957 Zoning Ordinance. That approval granted the Applicant the right to construct a mix of housing types within the overall project, while meeting certain open space and other Code imposed standards. A Community Development Project under the 1957 Zoning Ordinance has been replaced by the Planned Residential Development concept of the 1982, and current, Development Regulations. A Planned Residential Development is defined under the 1982 Development Regulations as;

“A residential project which incorporates or combines reduced lot and area requirements with open space use of a substantial portion of the remaining land and is designed, developed and maintained in accordance with the special development regulations of this Part 1.”

This use is to be treated as a special exception for approval and review purposes. Special exception review standards, including that of Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981) are accordingly applicable to this request.

The applicable review standard is contained at Section 267-56 of the 1982 Development Regulations which impose certain transitional provisions for cases decided under the Zoning Ordinance of 1957, but which must be reviewed in light of the Development Regulations of 1982. That section states, inter alia:

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“ . . . In the case of a conditional use approval for a community development project (CDP), the applicant may proceed with development under the requirement and standard of the planned residential development (PRD) upon submission of a concept plan to the Zoning Administrator for review and approval. The concept plan shall include the undeveloped areas of the parcel, indicating the general distribution of land uses, phases of development, vehicle circulation network and open space system. The Zoning Administrator shall approve the concept plan in accordance with the requirements of this Part I, provided that:

- (1) The number of dwellings approved for the community development project is not exceeded.
- (2) Any off-site improvements required by the community development project are not waived.
- (3) Any recreation facilities required by the community development project are provided.
- (4) Any open space or public use required by the community development project is not reduced in area.

B. Any modification not in accordance with the terms of this Article shall require the approval of the Board pursuant to Section 267-9 of this Part I. (emphasis supplied)

C. The requirements of this Part 1 shall not apply to any zoning case pending before the Board or courts of this state.”

Therefore the requested modification, described by the Department as being minor in scope, is to be reviewed pursuant to the Limitations, Guides and Standards section set forth at Code Section 267-9I, discussed as follows:

- (1) The number of persons living or working in the immediate area.*

By allowing the Applicant to develop, at its discretion, more of the planned residential units as townhouses, instead of apartments/condominiums, the impact on the existing and surrounding community should be minimal. Allowed density will not be exceeded and, due to the type of construction, may in fact be less than that originally approved in 1981.

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- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Hollywoods will continue to be developed with all required and planned open space, sidewalks, pedestrian amenities, etc. As there will be no additional units allowed by this decision, traffic conditions should not be impaired.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

There will be no impact on either the growth of the neighborhood or community or a fiscal impact on the County. The request is consistent with the 2004 Master Plan.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such impact should be generated.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Both Harford County and State Police will provide police protection. Public water and sewer service the property.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The Community Development Project, now known as a Planned Residential Development, was, in fact, highly conditioned by the 1981 decision. It was a planning concept which generally allows development on large tracts of land as integrated communities, with all the open space and necessary and desirable amenities. Such a project is consistent with generally accepted engineering and planning principles, and is, in fact, generally encouraged by such principles and by Smart Growth principles. The modification requested and granted herein in not alter to any significant degree the originally imposed conditions of this use and will, in fact, tend to reduce the eventual density of the project.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

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- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The use is consistent with the Harford County Master Land Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such impact has been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Further, and lastly, the application must be demonstrated to comply with the review requirements of Schultz v. Pritts, supra. Schultz v. Pritts, as by now is well known, requires that a special exception use be reviewed in light of its potential and actual adverse impacts. If those impacts are greater at the location proposed than at some other location within the district, then the use must be denied.

For reasons already stated, it is found that the modification of this special exception, which is a minor adjustment, will have no greater impact on surrounding or nearby property, or the residents thereof, than if it were located at some other location. In other words, there is no particular facet of this use, or of the surrounding properties, which will create or allow an adverse impact greater than that which would be generally experienced for such a use irrespective of its location.

CONCLUSION:

Accordingly, it is recommended that the requested modification to Condition No. 8, in Board of Appeals Case No. 2750, be approved.

Date: October 21, 2008

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 19, 2008.