

**APPLICANT:**  
Evergreen Business Trust &  
Peak Management LLC

**BEFORE THE**  
**ZONING HEARING EXAMINER**

**REQUEST: Interpretation of the boundaries  
of zoning districts on Tax Map 56**

**FOR HARFORD COUNTY**

**BOARD OF APPEALS**

**HEARING DATE: February 13, 2013**

**Case No. 5782**

**ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Evergreen Business Trust

**CONTRACT PURCHASER:** Peak Management LLC

**LOCATION:** 1900 - 1906 Toll Green Way, Bel Air and  
1827 - 1907 Eastport Way, Bel Air  
Tax Map: 56 / Grid: 2C / Parcel: 591  
First (1<sup>st</sup>) Election District

**ZONING:** R1 / R3 and R4 Urban Residential Districts

**REQUEST:** Interpretation of the boundaries of a zoning district pursuant to  
Harford County Code Sections 267-10 and 267-17.

**TESTIMONY AND EVIDENCE OF RECORD:**

The subject property is an unimproved parcel lying on the west side of MD Route 24, south of Plumtree Road, and north of Bel Air South Parkway. The parcel has a mixed zoning of R1/R3/ and R4. The development of the parcel will allow the completion of Tollgate Road and, as a result, is of strong significance to the residents of that area and to users of Tollgate and adjoining roads.

The zoning history of the subject property is of peripheral interest. By Zoning Decision handed down in 1992, the subject property, which was a part of a larger parcel lying across what is now MD Route 24 <sup>1</sup>, was granted Planned Residential Development (PRD) approval for up to 462 apartment units, plus a small amount of retail use.

For that portion of the original parcel lying on the west side of MD Route 24, that is, the subject of this application, the approved 1992 site plan showed a total of 198 apartment units. As noted, that plan was never advanced and the subject property remains unimproved.

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<sup>1</sup> The part of the original parcel lying to the east of MD Route 24 is the proposed future Wal-Mart site.

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While the subject property is zoned R1/R3/and R4, in fact only a slim sliver of R3 actually exists along the east side of Tollgate Road, adjoined by the greater portion of the parcel which is zoned R4. The Applicant originally requested that this R3 sliver, being about 0.33 acres in size, be changed to R4, arguing that the district line is improperly drawn and R4 should follow the eastern boundary of Tollgate Road. All of the parcel to the east side of future Tollgate Road would accordingly (except for a very small piece of R1), be zoned R4. The net effect of such a change in zoning district lines will be to give the Applicant a slight increase in allowable density.

However, at the commencement of its presentation in this case the Applicant changed its request by asking that the R4 zoning line be changed to the middle of Tollgate Road. The Applicant cited as authority for this modified request Section 267-17 of the Development Regulations. The reason for this change, as articulated by the Applicant, was that a change of the R4 district to the east side of Tollgate Road (a change of 0.28 acres), would allow the Applicant to construct 197 units, not the 198 units that were originally allowed on this parcel; whereas a change of the R4 district line to the middle of Tollgate Road (a change of 1.08 acres) to R4, would give it 198 density units.

This is not a rezoning. The Applicant does not request a rezoning as such. Rather, it requests that the Board interpret zoning boundaries and move the R4 district line.

For the Applicant first testified Rowan R. Glidden, who was offered and admitted as an expert in land planning and landscape architecture. Mr. Glidden explained that he is familiar with the subject property and its history. Originally, 462 units were approved for the greater parcel which lies on both sides of MD Route 24.

Mr. Glidden further explained that under the application originally requested by the Owner, that is, moving the R4 lot line to the east side of Tollgate Road, the Department of Planning and Zoning had determined that only 197 density units could be allowed. This would be 1 short of that allowed under the original PRD approval. According to Mr. Rowan, the Applicant now asserts that the R4 line should, in fact, be moved to the center of Tollgate Road which would give the needed density to the Applicant to build 198 units (in fact, 200 units would be allowed if the zoning line were moved as requested). Mr. Glidden stated that if the zoning districts were to follow the east side of Tollgate Road, the net effect would be that approximately 0.288 acres would change from R3 to R4. If allowed to follow the center line of Tollgate Road, the net effect would be a change of about 1.08 acres from R3 to R4.

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Mr. Glidden explained that it is sound land planning to extend zoning to the center lines of roadways. Such an extension and interpretation would be consistent with the zoning lines of the parcel which lies south of the subject parcel, and is consistent with the manner in which other properties have been treated, including properties south of the subject parcel. Mr. Glidden believes a drafting error occurred and the zoning map should have been drawn to the center line of Tollgate Road.

For the Harford County Department of Planning and Zoning testified Anthony McClune, Deputy Director. Mr. McClune indicated that Tollgate Road was first platted through the property in 1994. Generally, the Planning and Zoning staff looks at the property as providing a transition from R4 to the east, through R3 and to the R1 parcels to the east. The Department believes this to be a reasonable transition. The Department agrees that the zoning lines do not exactly match the actual boundaries of future Tollgate Road. However, Mr. McClune sees no support for an extension to the center line of Tollgate. The Department opposes such an extension, although it supports an extension to the eastside of Tollgate Road.

He believes that Mr. Glidden is incorrect. The division between zoning districts along Tollgate Road south of the property is not to the center line of Tollgate Road. However, he concedes that good planning practices would not preclude an extension of the zoning district to either the east side of Tollgate Road or to the center line of Tollgate Road. He feels that beginning in 1982, and subsequent re-mappings, the intent of the County Council was to follow lot lines, not the center line.

In opposition testified William Vesperman of 1919 Cypress Drive, who has resided at his property since 1982, and is concerned about traffic noise along MD Route 24.

### **APPLICABLE LAW:**

Section 267-10 of the Harford County Code states:

#### *"Interpretation of Zoning Map.*

*The Board, upon application thereof, after notice to the owners of the properties affected and public hearing, may render interpretation of the boundaries of a zoning district by:*

- A. *Determination of location: determining the location of a road or lot layout actually on the ground or as recorded in comparison to the road and lot lines as shown on the zoning maps.*

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- B. *Map errors: permitting adjustment of any boundary line to conform to the intent of the comprehensive rezoning and that said adjustment is necessary to rectify a map-drafting error which occurred during the comprehensive rezoning process."*

Section 267-17 of the Harford County Code states:

*"Interpretation of Boundaries.*

*The following rules shall be used to determine the precise location of any zoning district boundary:*

- A. *Boundaries shown as following or approximately following the limits of any municipal corporation shall be construed as following such limits.*
- B. *Boundaries shown as following or approximately following streets shall be construed to follow the center lines of such streets.*
- C. *Boundaries shown as following or approximately following platted lot lines or other property lines as shown on the tax maps shall be construed as following such lines.*
- D. *Boundaries shown as following or approximately following railroad lines shall be construed to lie midway between the main tracks or such railroad lines.*
- E. *Boundaries shown as following or approximately following shorelines of any water body shall be construed to follow the mean high-water lines of such water body and, in the event of change in the mean high-water line, shall be construed as moving with the actual mean high-water line.*
- F. *Boundaries shown as following or approximately following the center lines of streams, rivers or other continuously flowing watercourses shall be construed as following the channel center line of such watercourses taken at mean low water, and, in the event of a natural change in the location of such streams, rivers or other watercourses, the boundaries shall be construed as moving with the channel center line.*

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- G. *Boundaries shown as separated from and parallel or approximately parallel to any of the features listed in Subsections A through F above shall be construed to be parallel to such features and at such distances therefrom as are shown on the map.*
  
- H. *Boundaries shown as following or approximately following the edges of watersheds as identified by the U.S. Natural Resource Conservation Services shall be construed as following such edges of the watershed."*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A review of the zoning map of the subject parcel clearly demonstrates that zoning district lines do not match the platted roadbed and right-of-way of future Tollgate Road. A small portion of the property to the east of Tollgate Road is zoned R3, whereas the balance of the parcel is zoned R4; and a small portion of the property to the west of the east boundary of Tollgate Road is zoned R4, whereas the balance is zoned R3. Quite apparently, the zoning maps were drawn when the exact lines of Tollgate Road had not yet been fixed or, if fixed, the maps were in error. The Applicant asks that this error in drafting be remedied.

The real question, however, is where should the location of the dividing line between the zoning districts be fixed? Where should R4 begin? Where should R3 begin? The Applicant originally suggested that it be to the east side of Tollgate Road. Now, because the Applicant needs additional density, it suggests that it be to the middle of Tollgate Road. The Department of Planning and Zoning disagrees. Each side argues that the zoning districts as established throughout the general vicinity of the subject property supports its individual view. In fact, while a review of the zoning maps introduced into evidence show a few locations where zoning districts are divided down the middle of public roads, in many instances zoning districts are not so divided and in fact follow the edge of a road, not the center.

A review and application of the standards of the Harford County Zoning Code is, accordingly, the only way this dispute will be settled. Section 267-10 allows an interpretation of boundaries by ". . . determining the location of a road or lot layout actually on the ground or as recorded in comparison to the lot and lot lines as shown on the zoning maps." This, written in conjunction with Section 267-10(B) which allows an adjustment to ". . . rectify a map drafting error. . ." certainly gives power to the Board to adjust a zoning lot line. However, the standards to be considered in such an adjustment are only laid out in Section 267-17 of the Code, Interpretation of Boundaries. That section provides certain rules which are used to ". . . determine the precise location of any zoning district boundary."

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Of significance is subsection B which states, "Boundaries shown as following or approximately following streets shall be construed to follow the center lines of such streets", and subsection C, which states "Boundaries shown as following or approximately following platted lot lines or other property lines as shown on the tax maps shall be construed as following such lines." The question then becomes - Is the R4 District on the subject property shown as following a street, or a "platted lot lines or other property lines"?

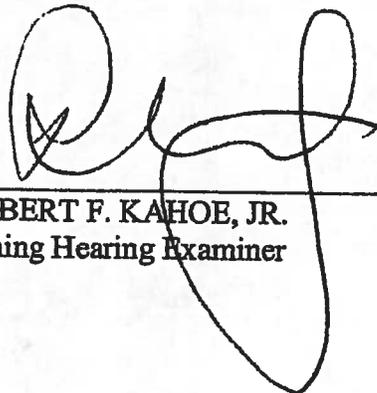
Since the zoning district is intended to use Tollgate Road as its boundary, subsection B would appear to be the correct standard to be applied. While subsection C also discusses platted lot lines or other property lines (the parcel continues to be an integrated unit and has not yet been subdivided), such an interpretation would only be made when plat lines are the only source of delineation. In the instant case, Tollgate Road is the clear delineation between the two zoning districts and was obviously intended to be such.

Accordingly, it is found that Section 267-17(B) is the applicable section. Its application to the instant case would result in a finding that the R3 and R4 zoning district on the subject property shall be adjusted to the center line of Tollgate Road.

**CONCLUSION:**

It is hereby found that the zoning maps showing the subject property are hereby ordered to be adjusted so that the R3 and R4 zoning districts are divided along the center line of Tollgate Road.

Date: April 11, 2013

  
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ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on May 9, 2013.**