

Tax Map/Block/Parcel
No. 74-15-827
Case 5990

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Nell's Acres Land, LLC
C/O Donald Patton
10 Venture Way
Sykesville, MD 21784

ATTORNEY: Kelly J. Shaffer, Esq.
Shaffer and Shaffer, LLP
73 East Main Street, Suite 1
Westminster, MD 21157

REQUEST: A request for modification of the conditional use granted in BZA Case 5053, to allow 9 additional villa style townhomes on an adjacent lot and a request to modify condition number 1 in BZA Case 4158, to allow single family retirement dwellings on Lot 2A.

LOCATION: The site is located at 0-0000 Ridenour Way, Sykesville, Maryland on property zoned "R-40,000" Residence District, in Election District 5.

BASIS: Code of Public Local Laws and Ordinances, Sections 158.133(D)(7) and 158.072(D)(3).

HEARING HELD: December 28, 2016

FINDINGS AND CONCLUSION

On December 28, 2016, the Board of Zoning Appeals (the Board) convened to hear the request for modification of the conditional use granted in BZA Case 5053, to allow 9 additional villa style townhomes on an adjacent lot and a request to modify condition number 1 in BZA Case 4158, to allow single family retirement dwellings on Lot 2A. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

In his opening statement Clark Shaffer set forth the extensive history of the development at Nell's Acre since the 1990s. There were numerous Board decisions involving the property. The applicant requested a modification of the conditional use granted by the BZA in case number 5053. That application allowed the applicant to build "Section Two" of the retirement community. Lot 2A was originally approved for adult day care. The instant request was to replace the adult day care location with 9 additional villa style townhomes. In BZA case number

4158 the Board included the following condition: "No single family dwelling is permitted on lots 20, 21 and Parcel A."

Martin W. Hackett is the president of CLSI. He was accepted as an expert in land use design. There was an existing development of Nells Acre Section One of 108 units. The Carroll County Planning Commission accepted plans to develop 124 units in December 2016. The applicant now wanted an additional nine units at the location of where the adult day care center was previously shown in the drawings. During the course of this project numerous traffic studies had been completed for review by County officials. The access to the 9 additional villa style townhomes would not be directly off of Maryland Route 26 and Liberty Road. The Board previously approved 133 units for the location. The applicant had originally applied for 336 units. Construction plans were prepared for 296 units at this time. The reduction in the number of units was based on input from the Planning Commission and the marketability of housing for the retirement community.

Donald Patton testified that he was a developer/homebuilder. He was aware of the development of the site from the beginning. He and his family had owned the land since the late 1970s. He stated that the approved amount of 296 units was reduced to 133 units due to the market and economics. The original plans called for three story units and the revised plans would have 1 ½ story units. He considered having lot 2A for commercial purposes but would abandon that request if given Board approval for these modifications.

Clayton Black stated that he was familiar with the project. He mentioned that the Planning Commission had approved a 133 unit project at an initial stage. The Planning Commission considered all 124 units with a focus on the 9 additional units of villa style townhomes. The Planning Commission approved the density for the 9 units. He stated that the original property was approved for 312 units. The 312 units was pared down to 296 units.

Delores Buck testified in the case. She is the president of the Nells Acres Association with regard to the existing property on Section One and the 108 units. Her main concern was about the traffic. She has been told that the traffic impact studies were within the acceptable limits for traffic. During rush hour and peak driving times she stated that it was difficult to come into and leave the development via automobile. She lived in her unit since the building was built. She stated that the County already owns the right of way on Ridenour Way. She wants the County to complete the road.

During his summation, Clark Shaffer stated that the request for 9 additional villa style townhomes was in the context of 296 units of existing approvals. The applicant was presently considering 133 units verses his current approval for 296 units. In 2001 when the Master Plan was completed the 108 units in Section One of Nells Acres were already in place.

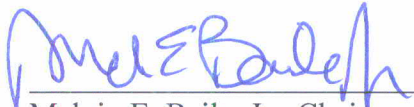
A December 16, 2016 memorandum by Lynda Eisenberg, Bureau Chief, and Clare Williams, Planning Technician, stated that the matter had been reviewed for consistency with the policies and recommendations contained in the *2014 Carroll County Master Plan*, the *2001 Freedom Community Comprehensive Plan*, the *Carroll County Water & Sewer Master Plan* and other plans. The staff finding was that the applicant's request was consistent with the *2014 Carroll County Master Plan* and *2001 Freedom Community Comprehensive Plan*.

In a December 16, 2016 letter to the Board, Philip R. Hager, Secretary to the Planning Commission wrote that the applicant's request is inconsistent with the *2001 Freedom Community Comprehensive Plan*. However, he noted that there were a number of mitigating factors that the Board should consider in the case.

Based on the mitigating factors set forth in Mr. Hager's December 16, 2016 letter, and the fact that retirement communities are permitted in every residential zoning district, the Board specifically found that its approval of the two modifications was consistent with the Carroll County Master Plan. Nursing homes and assisted living facilities are included in the bulk requirements of every residential zoning district.

The Board was convinced that authorization of the request for the two modifications was consistent with the purpose of the zoning ordinance. The Board approved the two modifications requested by the applicant.

1-3-2017
Date


Melvin E. Baile, Jr., Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Land Use Article, Section 4-401 of the Annotated Code of Maryland.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.