

**Tax Map/Block/Parcel  
No. 75-16-334 & 317  
Case 5787**

**OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND**

**APPLICANT:** PR Land, LLC & Pheasant Ridge MHC, LLC  
c/o Eyal Karsh, Director of Asset Management  
8833 Gross Point Road, Suite 310  
Skokie, IL 60077

**APPLICANT  
ATTORNEY** John T. Maguire, Esq.  
Hollman, Maguire, Titus & Korzenewski  
189 East Main Street  
Westminster, MD 21157

**OPPOSITION  
ATTORNEY** Leslie A. Powell, Esq.  
19 N. Court Street  
Suite 101  
Frederick, MD 21701

**REQUEST:** Request for variance and expansion of non-conforming use as follows: that if the Board finds that Section 155.096(B)(3) is applicable in this case, then the Board decide that the existing mobile home park does conform substantially with new park standards, or in the alternative, that if the existing mobile home park does not conform substantially with new park standards, then grant variances including the following, as to 18 of the existing 101 lots from minimum lot area of 6,000 square feet to existing areas as shown on Schedule B, as to 16 of the existing lots from the minimum setback of 150 feet from a public road right-of-way to the existing setbacks as shown on Schedule B, as to existing road widths, street grades and sidewalk requirements as needed as shown on Schedule C; and expansion of the existing mobile home park from 101 homes to about 236 homes as shown conceptually on Schedule A.

**LOCATION:** The site is located at Maryland Route 144 at Pheasant Ridge Drive, Mt. Airy, MD on property zoned "C" Conservation in Election District 13.

**BASIS:** Code of Public Local Laws and Ordinances, Section 155.096, 158.002, 158.033(A)(6), and 158.133(C).

**HEARING HELD:**

December 3, 2014, December 4, 2014 and January 8, 2015

**FINDINGS AND CONCLUSIONS**

On January 8, 2015, the Board of Zoning Appeals (the Board) convened to hear the request for variance and expansion of non-conforming use as follows: that if the Board finds that Section 155.096(B)(3) is applicable in this case, then the Board decide that the existing mobile home park does conform substantially with new park standards, or in the alternative, that if the existing mobile home park does not conform substantially with new park standards, then grant variances including the following, as to 18 of the existing 101 lots from minimum lot area of 6,000 square feet to existing areas as shown on Schedule B, as to 16 of the existing lots from the minimum setback of 150 feet from a public road right-of-way to the existing setbacks as shown on Schedule B, as to existing road widths, street grades and sidewalk requirements as needed as shown on Schedule C; and expansion of the existing mobile home park from 101 homes to about 236 homes as shown conceptually on Schedule A. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

This hearing was conducted over the span of three separate days: December 3, 2014, December 4, 2014 and January 8, 2015. On the day before the commencement of the hearing the counsel in opposition to the application filed a memorandum to the Board. For all of the reasons set forth in that memorandum, the opposition requested that the Board deny the application in its entirety. During two and one half days of the hearing, the applicant presented its case to the Board. When the applicant concluded its case and rested on January 8, 2015, counsel for the opposition made a motion for judgment. This motion was granted on a number of grounds by the Board.

Before the applicant rested its case in chief, seven witnesses testified in the case. Those witnesses were: Ronald Edward Thompson, P.E., a civil engineer; Michael M. Lenhart, traffic engineer; Michael D. Haufler, P.G., technical director, water supply assessment; Terrance W. McPherson, real estate appraiser; Eyal Karsh, director of asset management; Peggy Miguel, property manager of Lakeshore Management for Pheasant Ridge Estates; and Daniel Shields with Water Testing Labs of Maryland.

Mr. Thompson testified about the site plan for the expansion of the mobile home park. Exhibits 1, 2 and 3 were admitted through him. Michael D. Haufler's company, Hydro-Terra Group, completed the Water Supply Development Assessment found in Exhibit 19. His resume is found in Exhibit 18. Michael M. Lenhart generated the traffic report for the project in Exhibit 15. His resume is included in Exhibit 14. Terrance W. McPherson created the impact and market analysis report for the project. His report was entitled "Analysis of the impact of Expanding a Mobile Home Park Known as Pheasant Ridge Mobile Home Park on the Value of Adjoining Properties Market Analysis of 135 Proposed Mobile Home Sites..." Exhibit 23. His resume is included in Exhibit 22. Eyal Karsh was the official representative for the applicant. He is employed by Lakeshore Management. The company owns and operates 60 mobile home parks across the country. The conceptual renderings were admitted through him in Exhibit 24A, 24B, and Exhibit 25. Peggy Miguel is the property manager of the existing mobile home park at

Pheasant Ridge. She testified about the rules and regulations that residents must live by as part of their agreement to remain in the park. She receives complaints from the residents and issues violation notices to those who fail to follow the rules and regulations. Daniel Shields testified about the operations of a water and wastewater plant. He has three certified labs in Maryland. His company has operated the water and wastewater plants at Pheasant Ridge since May 2014.

Mr. Karsh testified that he represented the current owners of Pheasant Ridge Estates with regard to the 34 acres in property. He stated that the current owners of the property were not part of the former owners. He stated that the current owner, Lakeshore Management, Inc., bought the mobile home park property in 2007. Lakeshore manages the property. The 63 acre parcel was purchased in 2009 by Lakeshore Management, Inc. from Equity Lifestyle (ELS). Mr. Karsh stated that ELS owned both the 63 acre property and the 34 acre property which consisted of the existing mobile home park from 1988 to sometime between 2003 and 2007. Sometime between 2003 and 2007 Diversified Investment Services bought the existing mobile home park from ELS. However, ELS continued to own the 63 acre expansion area. In 2007 Lakeshore Management, Inc. purchased the existing mobile home park from Pheasant Ridge MHP, Inc., which is controlled by Diversified Investment Services. In 2009 Lakeshore Management, Inc. purchased the 65 acre expansion area from ELS and/or Maryland Vistas.

According to Exhibit Z Pheasant Ridge MHC, LLC manages Pheasant Ridge Estates (the mobile home park) and Lakeshore Management, Inc. is known to be the owner of Pheasant Ridge Estates.

A number of exhibits pertain to the deed history of the property in question. Those exhibits include Exhibit 6, Exhibit D and Exhibit E. Exhibit E begins with a deed dated October 14, 1960 that deeds 112 acres from Norman A. Showers and Mary Elizabeth Showers to Franor Mobile Lodge Corp. On June 25, 2003 Maryland Vistas, Inc. granted, sold, transferred and conveyed property to Pheasant Ridge MHP, Inc. Pheasant Ridge MHP, LLC granted, sold transferred and conveyed property to Pheasant Ridge MHC, LLC on August 4, 2007. On October 9, 2009 Maryland Vistas, Inc. granted, sold, transferred and conveyed property in a special warranty deed to PR Land LLC.

The evidence continues with deeds in Exhibit D. There is a deed from Maryland Vistas, Inc. to Maryland Vistas, Inc. to consolidate certain parcels and to reconfigure the property on May 27, 2003. The purpose of the deed was to reconfigure five parcels into two parcels. This deed related to property containing 34.429 acres.

Exhibit E is a deed from Maryland Vistas, Inc. to Maryland Vistas, Inc. to consolidate and reconfigure property on May 27, 2003. This deed related to property containing 63.977 acres.

In reference to the deed history of the properties, John Maguire wrote the following on pages three and four in his December 30, 2014 memorandum of law:

There has been no legal subdivision of the property. Instead, in accordance with the recitals in the 2003 Deeds the prior owner simply reconfigured and consolidated title to the land by deed from five (5) or six (6) parcels into two (2) parcels.

All of the land now before the Board is owned and controlled by the same entity and can easily be consolidated into one deed in the name of one owner once a site plan is approved but before any expansion occurs.

The attorney for the opposition, Leslie Powell, wrote this about the properties on pages two and three of her memorandum to the Board:

Shortly after the [1988] decision by the BZA, the prior owner of the property sold it to Maryland Vistas, Inc., an Illinois corporation... In 2003, Maryland Vistas, Inc. subdivided the property into two separate lots. *See* Exhibits D and E. Liber/Folio 3444/463 comprises the area where the trailer homes are currently installed and constitutes approximately 34.4 acres. Exhibit D, hereto. As explained in the deed, the purpose was to take the five parcels described in Exhibit D and “reconfigure the parcels into two parcels”. *Id.* The legal description appended to the deed is titled “Diversified Project Mobile Home Parcel” and this is the only lot on which the mobile homes are located. Ex. D at 3444/465. The second new lot created in 2003, is comprised of about 62 acres. Exhibit E, Liber/Folio 3444/472. The legal description for this parcel is titled “Diversified Project Parcel to Be Conveyed”. Ex. E at 3444/474.

After the subdivision, in 2003, Maryland Vistas, Inc. transferred the trailer park lot to Pheasant Ridge MHP, Inc.... Then, in 2007 the 34-acre trailer park lot was transferred from Pheasant Ridge MHP, LLC (successor to Pheasant Ridge MHP, Inc.) to Pheasant Ridge MHC, LLC for \$4,875,000.00.... Thereafter, in 2009, the approximately 62-acre unimproved parcel was transferred from Maryland Vistas, Inc. to PR Land, LLC with two smaller parcels.

When the applicant concluded its case and rested on January 8, 2015, counsel for the opposition made a motion for judgment. *Maryland Rule 2-519* allows a party to move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party.

That motion was based on a few different theories:

- 1) Abandonment—the 63 acre (proposed expansion area) and 34 acre (existing mobile home park) parcels were purchased by different entities at two different times.
- 2) The only instance when the Board can put a nonconforming use on a different parcel is with a junkyard. Carroll County, MD Code of Ordinances §158.033(B).
- 3) The whole tract of land in this case is in the Conservation District and a nonconforming use with higher density like a mobile home park is inconsistent with this zone.

The Board found that the current owners of the 63 acre (proposed expansion area) and 34 acre (existing mobile home park) have not been the same since the 1960s. In the 1960s the property was owned by Norman A. Showers and Mary Elizabeth Showers. The property was

then owned by the Franor Mobile Lodge Corp. The Board then relied on the testimony from Mr. Karsh and Exhibit 6, Exhibit D and Exhibit E for the other owners.

Mr. Karsh stated that ELS owned both the 63 acre property and the 34 acre property which consisted of the existing mobile home park from 1988 to sometime between 2003 and 2007. Sometime between 2003 and 2007 Diversified Investment Services bought the existing mobile home park from ELS. However, ELS continued to own the 63 acre expansion area. In 2007 Lakeshore Management, Inc. purchased the existing mobile home park from Pheasant Ridge MHP, Inc., which is controlled by Diversified Investment Services. In 2009 Lakeshore Management, Inc. purchased the 65 acre expansion area from ELS and/or Maryland Vistas.

In total owners of both the 63 acre property and the 34 acre property included Norman A. Showers and Mary Elizabeth Showers, Franor Mobile Lodge Corp., Equity Lifestyle, Pheasant Ridge MHP, Inc., Diversified Investment Services, and Lakeshore Management, Inc. When the current owner acquired the 34 acre parcel in 2007 it did not also purchase the 65 acre parcel in 2007. The current owner did not purchase the 65 acre parcel until 2009. Between 2007 and 2009 the 63 acre (proposed expansion area) and 34 acre (existing mobile home park) were under different ownership. The 63 acre parcel has never been used as a mobile home park. Although one or more previous owners of the lots may have intended to later use the 63 acres as a mobile home park, the establishment of such a use did not occur since the park was designated as a nonconforming use in the 1960s. The current owner of the 63 acres is PR Land, LLC. The current owner of the 34 acre parcel is Pheasant Ridge MHC, LLC. Pheasant Ridge MHC, LLC and PR Land, LLC are the applicants in this case.

In Carroll Co. Code §158.033(D) provides that: “No building, structure, or premises where a nonconforming use has ceased for 12 months or more, unless otherwise extended as herein provided, shall thereafter be used except in conformance with this chapter.” In this case, the twelve month period is long gone, and given the public policy against proliferation of non-conforming uses, the Board will not allow the creation of a non-conforming use on an entirely separate premise created long after the adoption of the zoning ordinances. The lapse of more than eleven years precludes the creation of a nonconforming use on the 63 acre parcel where no nonconforming use has ever existed.

**The Board accepts the arguments and legal authority set forth in section I B (entitled The Non-Conforming Use does not Exist Throughout the Property and Cannot be Expanded to a Lot Where it Never Previously Existed) of the memorandum submitted by Leslie Powell.**

[START OF I B as submitted in memorandum by Leslie Powell.]

The non-conforming use does not exist throughout the property and cannot be expanded to a lot where it never previously existed. Generally, the right to a non-conforming use extends only to the structures and/or area that were actually in use at the time of the zoning change.

It is long settled in Maryland law that a property is only protected against rezoning by non-conforming use status if the property owner

demonstrates that *substantially all of the property was being used in a permissible means before a zoning change was enacted.*

*Maryland Reclamation Assoc 's, Inc. v. Harford County*, 414 Md. 1, 63 (2010) (emphasis added). Relying on this principal, the Court rejected the claim that because the applicant had a permit to operate on 24 of the acres, its non-conforming use could apply on the remaining 31 acres. *Id.* at 64. *See also, Cnty Comm 'rs of Carroll Cnty v. Zent*, 86 Md. App. 745, 752 (1991) a landowner “may establish a ‘lawful nonconforming use’ if the evidence conclusively establishes that before and at the time of the adoption of the original zoning ordinance, he was using *substantially all of his tract of land* in a then-lawful manner for a use which by a later legislative action became nonpermitted”, quoting *Love v. Montgomery Cnty.*, 85 Md. App. 477, 496 (1990).<sup>1</sup>

While the Carroll County Code does provide for expansion of a non-conforming use by the BZA, the BZA’s authority to permit such an expansion is not unfettered. Thus, a change in use may be permitted if it is “a more appropriate use or classification unless the use is specifically prohibited in the district.” Carroll Co. Code, § 158.033(B). Similarly, a junkyard may be moved “to another location on the immediate property or to a location on an adjoining property” if it has “less adverse impact to the general public and adjoining property.” *Id.* This ability to move onto adjoining property, however, is restricted to junkyards. There is *no* provision that allows a non-conforming trailer park use to expand onto an “adjoining property”, particularly where the non-conforming use remains on the separate 34 acre lot.<sup>2</sup> Indeed, the impact of the 130% expansion has far greater impact on the general public and nearby property owners than moving in preexisting junkyard to a less obvious place.<sup>3</sup>

Here, the Applicant cannot meet its burden as a matter of law. It seeks to enlarge the non-conforming use (by over 130%) onto a separate lot which has *never* been used for the trailer park. Because “substantially” none of the property comprised in the current Application was “being used in a permissible means before the zoning change was enacted”, the Application should be rejected out of hand.

[END OF I B as submitted in memorandum by Leslie Powell.]

Carroll County has a permissive zoning ordinance. *County Comm'rs of Carroll County v. Zent*, 86 Md. App. 745, 759 (1991). The ordinance lists the uses permitted and all else is

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<sup>1</sup> *Zent* dealt primarily with the concept of accessory uses. However, the Court noted, “the business is ... exactly the same business being operated at the time of the enactment of the ordinance, and it *is being operated on the same land*...The evidence indicates that there had been constant storage of items outside, which were adjunct to the repair phase of the business at issue, prior to the enactment of the zoning ordinance.” *Zent*, 86 Md. App. at 757. (Emphasis added.)

<sup>2</sup> If the Commissioners wanted to allow other nonconforming uses to relocate, they could have easily so stated. They did not. Where specific terms are referenced, principles of statutory construction lead to the conclusion that the failure by the legislature to itemize other exceptions means that they are to be excluded. *Cox v. Prince George's Cnty.*, 86 Md. App. 179, 194 (1991) (“if a statute or ordinance...specifies particular uses subject to modification, unlisted uses are excluded from modification”).

<sup>3</sup> Allowing rampant expansion of non-conforming uses on separate property would elevate a nonconforming use above that of a special exception which, unlike a non-conforming use, is considered permitted where certain criteria are met. This non-conforming use is completely unfit for conservation zoning where the maximum density allowed is one dwelling unit per three acres.

prohibited. The zoning code sets out the permitted uses for individuals in the county. The fact that the code does not allow mobile home parks to expand like it would allow a junkyard to expand is instructive. The Board determined that such expansion of a mobile home park was not authorized by the Code.

John Maguire made the statement that the original property where the mobile home park was located had approximately ninety acres. He added that both the 63 acre property and the 34 acre property were a part of the original ninety acres. He took the position that the nonuse of the 63 acre parcel as a mobile home park should not be an issue. The applicants' application for an expansion was the response to the arguments about abandonment and nonuse as a mobile home park. The Board rejected this position.

The Board also considered that all of the property in question was located in the Conservation District. Code §158.071(A). The purpose of the "C" District is to prescribe a zoning category for those areas where, because of natural geographic factors and existing land uses, it is considered feasible and desirable to conserve open spaces, water supply sources, woodland areas, wildlife, and other natural resources. This district may include extensive steeply sloped areas, stream valleys, water supply sources, and wooded areas adjacent thereto. This district, with its low density, is not consistent with a high density mobile home park. The expanded park would be larger than the existing park. The expansion involves an expansion of the existing mobile home park from 101 homes to about 236 homes. Some of the mobile homes would be next to estate homes.

The Board also considered that a nonconforming use is frowned upon because they thwart the underlying purpose of zoning and land use planning. "Nonconforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values." See, *Purich v. Draper Properties, Inc.* 395 Md. 694, 710 (2006). The expansion of a nonconforming use of a mobile home park which is not permitted by the Code is unlawful. The applicant wants to expand a disfavored use.

Philip R. Hager wrote a November 7, 2014 letter to the Board. (Exhibit 29) In his letter he wrote that:

With regard to existing and planned land uses and compatibility with Visions and Goals for the area, it is clear that this use represents a significant conflict. The land use in the area south of I-70 has been and is projected to remain "Conservation" into the future. A large urban-style development such as this is incompatible with the existing and planned land use as well as the Vision for this area. The Accepted County Master Plan (2014) identifies the prevailing land use in the area south of I-70 as Resource Conservation and this is in direct contravention to the densities proposed by the applicant."

The Board was convinced that authorization of the request with regard to the expansion of a mobile home park was not consistent with the purpose of the zoning ordinance. The Board denied the application for all of the reasons set forth above.

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Date

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Brian DiMaggio, 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 Article 66B, Section 4.08 of the Annotated Code of Maryland Rules of Procedure.

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.

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