

Security Development, LLC * BEFORE THE
Petitioners and Owners * PLANNING BOARD OF
PLANNING BOARD CASE NO. 425 * HOWARD COUNTY, MARYLAND

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DECISION AND ORDER

The Planning Board of Howard County, Maryland held a public hearing on January 19, 2017 (continued on February 2, 2017), in accordance with Section 107.0.F. of the Howard County Zoning Regulations. It considered the petition of Security Development, LLC, to approve a Preliminary Equivalent Sketch Plan, SP-16-012, for 11 single-family detached lots and 4 open space lots. The 5.18 acre Rockburn Estates subdivision, located at 5333 Kerger Road, is identified as Parcel 22 on Tax Map 31, in the First Election District of Howard County, Maryland. The property is zoned R-20 (Residential: Single) and the Petitioner is proposing to develop the property utilizing the R-ED (Residential: Environmental Development) provision in accordance with Section 108.0.G.3. of the Howard County Zoning Regulations.

The Notice of Hearing was published and the subject property was posted in accordance with the Planning Board’s requirements, as evidenced by certificates of publication and posting, all of which were made a part of the record. Pursuant to the Planning Board’s Rules of Procedure, the reports and official documents pertaining to the petition, including the Technical Staff Report of the Department of Planning and Zoning, the Howard County Code, the General Plan of Howard County, the Howard County Subdivision and Land Development Regulations, the Howard County Zoning Map and Regulations, the Howard County Landscape and Forest Conservation Manuals, the DPW Design Manual, the Adequate Public Facilities Ordinance, and comments from the Subdivision Review Committee agencies were made part of the record in this case.

Mr. William Erskine, Esq., of Offit and Kurman, represented the Petitioner. Several nearby property owners, who were unrepresented by legal counsel, appeared in opposition to the petition.

After careful evaluation of all testimony and information presented, the Planning Board made the following Findings of Facts and Conclusions of Law:

FINDINGS OF FACT

1. Derrick Jones, staff planner, presented the Technical Staff Report which recommended approval of the Preliminary Equivalent Sketch Plan, SP-16-012, subject to comments from reviewing agencies and any conditions of approval by the Planning Board.

The proposed development is summarized in the Technical Staff Report as follows – the property is zoned R-20 but will be developed under the R-ED Regulations as permitted by Section 108.0.G.3 of the Howard County Zoning Regulations. The R-ED District permits 2 dwelling units per net acre and the subject property is 5.14 acres which allows 10 lots. In addition, Section 107.0.H of the Zoning Regulations

permits the importing of up to 10% of the density, or 1 additional dwelling unit, which the developer proposes for a total of 11 lots.

The development proposal is therefore for 11 single-family lots and 4 open space lots. The residential lots, which are required to be a minimum of 6,000 square feet, range from 6,006 square feet to 7,535 square feet, except for lot 6, which will contain the historic John S. Ridgely Farm House and is 11,365 square feet in area.

All the residential lots will front on the proposed extension of Briar Oak Court, a 24 foot wide public road.

Mr. Jones indicated that all requirements for subdivision in accordance with the R-ED Zoning Regulations had been met and that all building and project boundary setbacks were met, except for a 75-foot project boundary setback that was reduced to 40.9 feet for an existing historic house, as granted by the Hearings Examiner (BA-15-045v). Mr. Jones noted that the site does not contain any regulated environmental features and does not front a scenic road, and that it complies with the review criteria set forth in Section 107.0.F.6 of the Zoning Regulations. An aerial photo of the parcel was provided, as well as an exhibit of the subdivision plan, which featured the proposed road extension (into the subdivision), lot design, landscaping, the preservation of a historic house, a forest conservation easement and open space lots which included a pedestrian pathway to an adjoining public park.

2. Mr. David Thompson of Benchmark Engineering, Inc., testified on behalf of the Petitioner. Mr. Thompson testified that the property is a little over 5 acres in area, and that except for a small area of steep slopes, the subject property contained no sensitive environmental resources such as floodplain, wetlands or forest. He indicated that the property sloped from north to south with a 6% slope, and that the Petitioner is maintaining that slope and the current drainage patterns on the subject property with the proposed development. Mr. Thompson further testified that the Petitioner is required to do afforestation as part of the proposed development and that they are proposing to satisfy that requirement by providing a forested buffer in the northern part of the subject property. Mr. Thompson indicated that all access to the subject property would be on Briar Oak Court.

3. Mr. Thompson stated that R-20-zoned properties are permitted to develop to the full extent under the R-ED regulations, but that development is limited to single-family detached homes. He stated that the plan sufficiently meets all three criteria listed in Section 107.0.F. of the Zoning Regulations, the criteria for the evaluation of Preliminary Equivalent Sketch Plans by the Planning Board in the R-ED District.

Mr. Thompson stated that the main house, the John S. Ridgely farm house, was being retained on the subject property in accordance with the comments of the Howard County Historic Preservation Commission (HPC), which recommended the retaining of the home. The HPC did not recommend retaining the barn or the shed on the property and the Petitioner is not proposing to retain them. The Petitioner introduced into the record Applicant's Exhibit 1, a letter from S. Allan Shad, Chairman of the Howard County Historic Preservation Commission, dated November 12, 2015. The letter indicated that the HPC had recommended that the house on the property be saved, restored and included in the subdivision on Lot 6, and that the Petitioner had revised its plans to follow this recommendation. The HPC's letter indicated that it was in favor of the subdivision re-design to save the house as well as the granting of the variance to allow the farm house to be located within 40.9 feet of the project boundary rather than the required 75 feet.

Mr. Thompson addressed each of the criteria of Section 107.0.F.6. of the Zoning Regulations as follows:

a. The proposed lay-out of lots and open spaces effectively protects environmental and historic resources.

Mr. Thompson testified that except for 680 square feet of steep slopes under the barn, which was to be removed, there were no environmental resources on the subject property, so there were no environmental resources in need of protection. As to the historic resources on the subject property, Mr. Thompson indicated that the Ridgely farm house was being retained and would be restored, probably by the buyer of Lot 6. Mr. Thompson noted that the retention of the farm house was done based on the recommendation of the HPC and was enabled by the Hearing Examiner's grant of a variance from the 75 foot project boundary setback requirement. Mr. Thompson noted that the HPC had made a site visit to the subject property and had only recommended retention of the farm house, not the barn, shed or stone wall also located on the subject property. Mr. Thompson acknowledged that the area of the farm house was about the same as the barn's area.

b. Buildings, parking areas, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading.

Mr. Thompson testified that the site slopes from north to south at 6 % slope, and that the discharge point for the storm water management collection system at the southern boundary of the property was in the same location as exists pre-development. Mr. Thompson indicated that the storm water discharge would not be near the existing residences on Briar Oak Ct. to the west of the subject property. Mr. Thompson added that any necessary grading would be done to match the 6% grade, and that no 20 foot cuts or massive grading would be undertaken as part of the development. Mr. Thompson also testified that the road would be extended at the existing grade, and that only enough grading to create drainage swales for the proposed homes would be done.

c. Setbacks, landscaped buffers, or other methods are proposed to buffer the development from existing neighborhoods or roads, especially from designated scenic roads or historic districts.

Mr. Thompson testified that, except for the varied setback for the Ridgely farm house, the Petitioner was proposing a 75 foot setback for the west, north and eastern boundaries of the subject since they border adjacent residential uses, while a 50 foot setback is proposed for the southern boundary because it is adjacent to Rockburn Park. Within these setback areas, open space lots, comprising over 50% of the area of the site, are located between the proposed lots and the adjacent properties. Mr. Thompson also testified that Type "A" perimeter landscaping was proposed for all the sides of the property except for the north side, for which forest conservation was to be provided. Mr. Thompson acknowledged that the Type "A" landscaping proposed was the minimal landscaping required between residential uses and was comprised of one shade tree every 60 feet according to the Howard County Landscape Manual.

Mr. Moxley of Security Development, LLC, testified briefly on behalf of the petitioner. Mr. Moxley stated that his company has not aggressively marketed the Ridgely farm house as they prefer to complete the subdivision process and let the future property owner of Lot 6 restore it. Mr. Moxley testified that the HPC did make a site visit to the subject property but only asked that the farm house be retained. Mr. Moxley indicated that the barn and shed were not as old as the farm house and not as historic. He also indicated that the barn was dilapidated and falling down.

3. Ms. Katherine Taylor testified in opposition to the proposed subdivision. Ms. Taylor testified that she had lived in the neighborhood for twenty years, and that the previous owners had horses and she did not believe that the barn was dilapidated and that it had been a working barn until recently.

Ms. Taylor's chief point was that the density of the proposed subdivision and the smaller size of the lots made it incompatible with the surrounding community, particularly Sunnyfield estates, which had larger lots. Ms. Taylor noted that the lots in the surrounding community ranged from 10,000 to 18,000 square feet, while the lots in the proposed development were much smaller. Ms. Taylor indicated that she believed the Infill requirements in the Howard County Subdivision and Land Development Regulations impliedly required similar sized lots in infill development to be compatible with existing development. She acknowledged that this requirement was not expressly stated to be a criterion for the Planning Board to apply in the Zoning Regulations.

Ms. Taylor also testified that she did not believe R-20-zoned property could develop as R-ED unless there were substantial environmental resources on the property to protect, and that the subject property by Petitioner's own admission had almost no environmental resources to protect. Ms. Taylor also indicated that because the farm house and barn constituted a very small percentage of the subject property, protection of historic resources would also not be significant, so that use of the R-ED development option was also not appropriate. Ms. Taylor acknowledged that there were no provisions in Section 108.0.G. which provided any of these limitations on the use of the R-ED development option for R-20-zoned land.

Ms. Taylor testified that the Petitioner's proposed importing of one residential unit to the subject property was also not appropriate because of the variance granted for the lot containing the historic farm house.

Ms. Taylor also testified that the buffering proposed for the adjacent residential areas to the west of the subject property were inadequate to protect those areas from the smaller lot size development proposed.

Ms. Laurie Alcock, Mr. Philip Kemplin and Mr. Jonathan Finkelstein expressed opposition to the proposed development for reasons similar to those expressed by Ms. Taylor- that the proposed smaller lots permitted under the R-ED development option in R-20 was incompatible with the surrounding community and should not be permitted.

4. The Planning Board determined that it wanted the Petitioner to further address two issues before it made a decision on the petition. First the Board asked the Board to propose additional buffering on the west side of the property between its proposed development and the residential development to its west, Sunny Field Estates. Second, the Board asked the developer to propose covenants to provide protections for the retaining of the Ridgely farm house on proposed lot 6 in addition to Petitioner's proposed note on the subdivision plat requiring the retention of the farm house on Lot 6 as part of the approved subdivision.

The Petitioner, at the February 2, 2107 hearing, introduced into the record Applicant's Exhibit 2, an enhanced landscape plan showing an upgrade from the previously proposed Type "A" buffer along the western boundary of the subject property with lots 86-88 of Sunny Field Estates, to Type "C" buffer. Mr. Thompson testified that a Type "C" buffer is a heavy buffer normally used between residential and non-residential uses and requires a shade tree every forty feet and evergreen tree every 20 feet. Mr. Thompson indicated he did not refer to the Infill requirements in proposing the Type "C" buffer, indicating that the Petitioner was voluntarily proposing this level of buffer in response to the Board's request.

The Petitioner also introduced into the record Applicant's Exhibit 3, A Declaration of Supplemental Notice, which will be recorded at the time of the subdivision plat's recordation. This Declaration provides that as a condition of approval of the proposed subdivision of Rockburn Estates, Security Development, LLC, as Declarant, would "covenant that the existing historic single-family dwelling (the "Ridgely Farm") located upon that certain lot designated as "Lot 6" on the Plat would be preserved and would be integrated

into the design of the Declarant's proposed subdivision." This Declaration would run with the land and would prevent any demolition of the Ridgely farm house unless the department of Planning and Zoning approved the demolition based upon a finding "that despite commercially reasonable efforts it is no longer practical or feasible to preserve" the farm house.

The Petitioner also introduced into the record Applicant's Exhibit 4, a proposed general note, which would appear on the recorded subdivision plat of the Rockburn Estates subdivision, which would state: "The existing historic single-family structure located upon Lot 6 shall remain and no demolition permits shall be issued with respect to such structure except upon the prior approval of the Director of the Howard County department of planning and Zoning, or his/her designee, based upon a finding that despite commercially reasonable efforts it is no longer practical or feasible to preserve the same."

5. The Board is persuaded that the evidence, based on the testimony of Mr. Thompson and Mr. Moxley, and the Department of Planning and Zoning's Technical Staff Report as noted in Findings of Fact 1, 2 and 4, demonstrates that the proposed layout of lots and open space effectively protects environmental and historic resources as is required by Section 107.0.F.6.a. of the Howard County Zoning Regulations. As Mr. Thompson testified, and Ms. Taylor conceded, there are virtually no environmental resources on the subject property to protect, so that part of the criterion is inapplicable to this petition. As to the historic resources, the evidence was undisputed that the Petitioner had taken steps, through the note to be placed on the recorded subdivision plat (Applicant's Exhibit 4) and the Declaration to be recorded (Applicant's Exhibit 3), to perpetually retain the Ridgely farm house on proposed Lot 6, as recommended by the Howard County Historic Preservation Commission, so as to protect the historic resource on the subject property.

6. The Board is persuaded that the evidence, based on the undisputed testimony of Mr. Thompson and the Department of Planning and Zoning's Technical Staff Report as noted in Findings of Fact 1 and 2, demonstrates that buildings, parking areas, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading.

7. As indicated above in Findings of Fact 5 and 6, none of the parties who appeared in opposition to the petition disputed the facts presented by Petitioner or DPZ as they relate to the criteria of Section 107.0.F.6.a. and b. of the Howard County Zoning Regulations. Instead the opposition parties testified that they believed the proposed subdivision, developed as an R-ED option in the R-20 District, as permitted by Section 108.0.G.3. of the Howard County Zoning Regulations, was incompatible with the surrounding residential community based on the small lot sizes proposed. None of the opposition cited a section of the Zoning Regulations which permitted the Planning Board to apply a "compatibility" criterion to the proposed subdivision.

Ms. Taylor contended, as indicated in Finding of Fact 3, that the "intent" of the Infill subdivision requirements, Section 16.127 of the Howard County Subdivision and Land Development Regulations, requires that lot sizes of infill development must be similar to the lot sizes of adjacent existing residential development, and that this proposed subdivision does not meet this requirement. Ms. Taylor could not point to the specific provision in Section 16.127 that required the similar lot size requirement, and could not cite the provision in the Zoning Regulations or the Subdivision Regulations which gives the Planning Board the authority to apply this compatibility criterion to a proposed R-ED subdivision.

Ms. Taylor contended, as indicated in Finding of Fact 3, that an R-20-zoned property could not exercise the R-ED option of development, pursuant to Section 108.0.G.3. of the Zoning Regulations because there were negligible environmental resources and proportionally insignificant historic resources on the subject property to protect. Ms. Taylor could not cite the provision in Section 108.0. of the Zoning

Regulations which supported this position, and could also not cite the provision which gives the Planning Board the authority to make this determination as to the permitted use of the R-ED option in R-20-zoned properties.

Ms. Taylor contended, as indicated in Finding of Fact 3, that the importing of one residential dwelling unit to the subject property was inappropriate because of the variance granted by the Hearing Examiner to the Ridgely farm house on proposed Lot 6. Ms. Taylor could not point to a specific provision in the Zoning Regulations to support this position and could not cite a provision which gives the Planning Board the authority to make this determination.

The Board notes that the Department of Planning and Zoning is given the authority to make determinations as to Infill Subdivisions under Section 16.127, to make determinations as to ability of an R-20-zoned property to develop as an R-ED option under Section 108.0.G.3., and to make determinations as to the qualifications of a property as a receiving parcel under Section 128.0. of the Howard County Zoning Regulations. The Department of Planning and Zoning, in its Technical Staff Report, indicates that it had approved all three requests under its authority. The Board also notes that its sole authority in this case is to make a decision on the proposed preliminary equivalent sketch plan under the limited criteria of Section 107.0.F.6.a.through c. of the Zoning Regulations.

8. The last applicable criterion which the Board must apply in section 107.0.F.6 is subsection c. which provides that setbacks, landscaped buffers, or other methods are proposed to buffer the development from existing neighborhoods or roads, especially from designated scenic roads or historic districts.

The Board is persuaded that the evidence, based on the testimony of Mr. Thompson and the Department of Planning and Zoning's Technical Staff Report as noted in Findings of Fact 1, 2 and 4, demonstrates that, with the exception of the landscape buffer on the west side of the subject property, the methods proposed to buffer the development from the existing neighborhoods do in fact provide sufficient buffering. The 75 foot setback from the proposed homes to properties to the north, combined with the substantial forest conservation to be provided and the intervening open space lot, provide a substantial landscaped buffer for those parts of the adjacent neighborhood. The only exception to this 75 foot buffer is the 40.9 foot setback variance granted by the Hearing Examiner to allow the Ridgely farm house to be retained. The Hearing Examiner has jurisdiction over this matter, not the Planning Board, and the Board notes that this reduced setback is necessary to retain the historic structure in order to address the criterion in subsection a.

The Board was persuaded by the testimony of those in opposition, as indicated in Finding of Fact 3, that the Type "A" perimeter landscaping initially proposed by the Petitioner along the west side of its boundary with the Sunny Field Estates neighborhood to the west, was inadequate to buffer the proposed development from that neighborhood. The Board asked the Petitioner to propose more substantial landscaping in response to this testimony and the Petitioner responded by proposing, as shown on Applicant's Exhibit 2, Type "C" perimeter landscaping as indicated in Finding of Fact 4. The Board finds, based on Finding of Fact 4 that this substantially increased landscaping, combined with the required 75 foot setback and intervening open space lots, will sufficiently buffer the Sunny Field Estates neighborhood from the proposed development. The Board notes that there are no scenic roads or historic districts applicable to this petition.

CONCLUSIONS OF LAW

1. Petitioner, as one seeking the Planning Board's approval of its Preliminary Equivalent Sketch Plan for a residential subdivision consisting of 11 single-family detached lots and 4 open space lots in the R-20 Zoning District, developing according to the R-ED Zoning District requirements, pursuant to Sections 107.0.F.6 and 108.0.G.3. of the HCZR, has the burden of demonstrating that the criteria of Subsections a. through c. of Section 107.0.F.6. have been met, in order for the Board to approve the above-mentioned Plan.

2. There is sufficient evidence in the record as identified in the Board's Findings of Fact above, for the Board to conclude that the Petitioner has met its burden of demonstrating that it has satisfied the above-cited criteria for approval.

3. For the reasons stated in the above Findings of Fact, the Board concludes that Petitioner has conclusively established through the evidence in the record that the following criteria for approval have been met by its proposal:

a. The proposed layout of lots and open space effectively protects environmental and historic resources.


b. Buildings, parking areas, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading.

c. Setbacks, landscaped buffers, or other methods are proposed to buffer the development from existing neighborhoods, especially from designated scenic roads or historic districts.

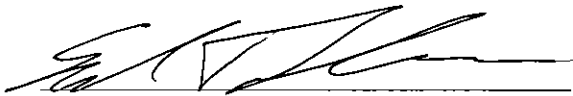
For the foregoing reasons, the petition of Security Development, LLC for approval of a Preliminary Equivalent Sketch Plan, SP-16-012, for the subdivision of 11 single-family detached residential lots and 4 open space lots on 5.19 acres of land zoned R-20, but being developed by R-ED zoning requirements, on this 20th of April, 2017 is APPROVED by the Planning Board of Howard County, Maryland, subject to: 1) the provision of landscape buffering as shown on Applicant's Exhibit 2, including enhanced Type "C" landscape buffering to be provided along the subdivision's perimeter along its western property boundary; and 2) that the Declaration of Supplemental Notice, as shown on Applicant's Exhibit 3 and a general note added to the plat, as shown on Applicant's Exhibit 4 be recorded concurrently with the subdivision plat, in order to ensure the perpetual retaining of the Ridgely farm house on Lot 6 as provided in that Declaration and Plat note.

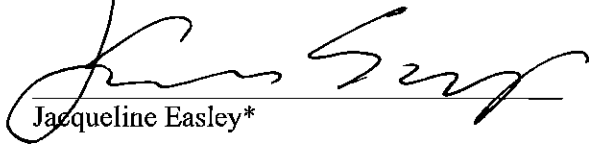
HOWARD COUNTY PLANNING BOARD


Phillips Ingoke - Chairperson


Erica Roberts - Vice-Chairperson

Absent
Delphine Adler



Ed Coleman


Jacqueline Easley*

*This Board member certifies that, prior to participating in this decision, she has listened to a recording of the portion of the hearing for which she was not present and has reviewed all of the evidence submitted for the portion of the hearing for which she was not present.

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ATTEST:


Valdis Lazdins, Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:
HOWARD COUNTY OFFICE OF LAW
Gary W. Kuc, County Solicitor


Paul Johnson, Deputy County Solicitor

LIST OF APPLICANT'S EXHIBITS:

- Exhibit No. 1 – *A letter by S. Allan Shad, Chair of the Historic Preservation Commission*
- Exhibit No. 2 – *An illustrative exhibit of the Rockburn Estates landscaping.*
- Exhibit No. 3 – *Declaration of Supplemental Notice*
- Exhibit No. 4 – *General Note proposal (to be added on the subdivision plat)*

LIST OF PROTESTANT'S EXHIBITS:

NONE