

**Tax Map/Block/Parcel
No. 52-7-529**

Case 5428/5415

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

APPLICANT: Link-Singer, LLC
c/o William Link
2625 Old Washington Road
Westminster, Maryland 21157

ATTORNEY: Clark R. Shaffer, for Applicant/Appellant
Teri A. Jones, for Planning Commission

REQUESTS: Appeal of the Planning Commission's decision that the density may not exceed 18 units at The Fields of Pheasant Run development.

Conditional use for a retirement community consisting of 24 active adult condominium units (The Fields of Pheasant Run).

LOCATION: The site is located on the north side of Kate Wagner Road (Parcel A), Westminster, MD 21157, on property zoned "R-40,000" Residential District in Election District 7.

BASIS: Code of Public Local Laws and Ordinances, Chapter 223-63 D, 223-186

HEARING HELD: July 30, and August 5, 2008

FINDINGS AND CONCLUSION

On July 30, & August 5, 2008, the Board of Zoning Appeals convened to hear an Appeal of the Planning Commission's decision that the density may not exceed 18 units at The Fields of Pheasant Run development and a conditional use request for a retirement community consisting of 24 active adult condominium units (The Fields of Pheasant Run).

The subject property is an undeveloped 6.29 acre parcel zoned R-40,000 located near the corner of Old Washington Road and Kate Wagner Road in Westminster. In 2005, Link-Singer, LLC (the Applicant) submitted a request to the Board of Zoning Appeals (the Board) for a conditional use for a 36 unit age restricted housing development at this location. The Board turned down that application in Case No. 5068. The Applicant filed an appeal of the Board's

OFFICIAL DECISION

Case 5428/5415

Page 2

decision to the Circuit Court for Carroll County. The Court, in a Decision and Order dated February 9, 2006, reversed the Board and the matter was remanded to the Board to approve the conditional use with 36 units.

Following to the Court's reversal of the Board, the Applicant submitted a concept site plan with 36 units for review by the Carroll County Planning and Zoning Commission (Planning Commission) at their July 18, 2006, meeting. There was an extensive discussion regarding the environmental features on the property which could possibly be impacted by the proposed development. In response, the Applicant reduced the proposed number of housing units to 32 and submitted a revised concept plan to the Planning Commission at their August 2007 meeting. After additional concerns were voiced by the Planning Commission with regard to proposed retaining walls and the arrangement of the buildings on the plan, the Applicant further reduced the number of units to 24. The concept plan was presented to the Planning Commission on March 18, 2008. Citing their authority under Section 223-66B of the Code, the Planning Commission determined that density for the proposed age restricted community could not exceed 18 housing units. In the interim, the Applicant sought confirmation from the Board that its proposed plan (at that time 24 units) did not have to be resubmitted to the Board under 223-188 (I). The Board demurred, concluding that the new density of 24 units constituted a "substantial change" to the plan under Section 188 (I) which was required to be heard again by the Board.

The Applicant re-filed the application for a conditional use to reflect the changed density of 24 units. In addition, the Applicant filed an Appeal of the Planning Commission's determination which limited the Applicant to 18 housing units for the proposed development. The Board consolidated the two cases (5415/5428) for purposes of the hearing. The Board was unable to reach a decision after the hearing on July 30, 2008, and reconvened on August 5, 2008. On that date, the Board deliberated further and made the following findings and conclusion:

The proposed development now consists of 24 units arranged in a single row of four units in six clusters. Two retaining walls, 300 feet in length and 8 feet in height will be constructed to support the development. The site is located within a priority funding area and will be served by public water and public sewer. The property fronts Kate Wagner Road. Immediately to the rear of the property are several homes on larger lots and a large residential subdivision. Across Kate Wagner Road are a wooded area and some agricultural uses. The greater neighborhood can be described as mixed use, with single family homes, townhouses, and duplexes, as well as medical centers, schools, and senior care facilities. The availability of public water and sewer makes this site logical for greater density than is typically found in large lot residential zoning.

The Planning Commission, at its March 18, 2008, meeting determined that the plan for this development would be allowed to proceed further with a maximum of 18 units. Based upon the testimony of one Planning Commission member to this Board, and a review of the Minutes

OFFICIAL DECISION

Case 5428/5415

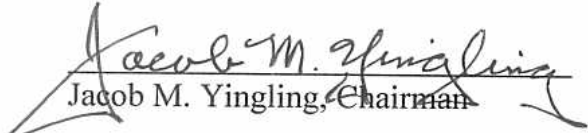
Page 3

of the Planning Commission's Meeting, it appears the limitation of 18 units was a compromise figure, which was designed to address the concerns of the immediate neighbors.

With all due respect to the Planning Commission, its determination to limit density to 18 units in this case does not appear to be supported by the evidence. The Applicant has produced persuasive testimony that proves that any traffic generated by 24 units will be minimal and will not adversely affect the surrounding road system. In addition, testimony established that the site is large enough to accommodate the proposed development of 24 units, and that the concept plan met all other County requirements. The availability of water and sewer is indicative of the fact that this parcel is appropriate for a more intense density. Also, the proposed use is not inconsistent with the other uses in the area. While the limitation of 18 units appears to have been made in response to the largely unsupported concerns of some of the neighbors of the proposed development, it was not based on any credible evidence. There was no credible evidence presented regarding threats to the neighbors' wells or septic systems from the proposed use. In addition, the fact that the 24 unit development would be visible to some of the immediate neighbors was not a sufficient reason to limit the density to 18 units. Based upon evidence and testimony heard by the Board, a limitation of 18 units had no rational basis, and a density of 24 units was proven by the Applicant to be an appropriate, reasonable and lawful density. The Board respectfully reverses the Planning Commission on this question and the plan should be allowed to proceed with 24 units.

Turning to the conditional use request, the Board found that a 24 unit age-restricted housing development on this site was consistent with the orderly growth of the community, as evidenced by the availability of water and sewer and frontage on heavily travelled Kate Wagner Road. There was no evidence of any adverse effect on property values or on any infringement upon the peaceful enjoyment of the neighbors in their homes. There will be no dust, fumes, gases or glare generated by this use and it is compatible with surrounding uses in the area, which include single family homes, duplexes, townhouses, and office uses. In addition, there is a need for age restricted housing in the County, and this use will not impact public schools. Rush hour traffic generated by this use will be negligible, and the adjoining roads will not be impacted to any substantial degree. In short, there was no evidence presented that any adverse effects generated by the proposed use would be greater here than elsewhere in the R-40,000 zone. Accordingly, the conditional use for 24 age-restricted dwelling units on this site was granted.

8/20/08
Date


Jacob M. Yingling, Chairman