

THE EFFECTIVE DATE OF THIS ORDINANCE IS June 25, 2019

ORDINANCE NO. 19-02-002

ORDINANCE
OF
THE COUNTY COUNCIL OF FREDERICK
COUNTY, MARYLAND

RE: BALLENGER RUN PUD
REZONING CASE R-05-09(C)

OPINION/FINDINGS

I. HISTORY

The Ballenger Run property was initially rezoned (Case No. R-05-09) to PUD by Ordinance No. 06-33-429, which became effective on September 28, 2006. The PUD was approved for 970 age-restricted dwellings, and included other conditions, such as construction of the main Ballenger Creek Trail and the spur trail to the north.

In 2013, the Ballenger Run PUD amended its Phase I Plan (Case No. R-05-09(A)) (approved by Ordinance No. 13-20-648, effective October 17, 2013) with the following revisions:

- Reduced the total approved dwelling units from 970 to 855 dwelling units, including 655 all age dwellings and 200 dwellings units that may be age-restricted dwellings or an assisted living/CCRC use with the same number of equivalent beds.
- Included a 13-acre elementary school site.
- Added building permit thresholds for the construction of the trails.

The PUD received Phase II approval (preliminary subdivision/site plan) for the first section of 443 lots in 2014. This first section included 207 single-family lots and

236 townhouses. The proposed 212 affordable multi-family units received site plan approval in 2018.

In 2017, SeD Maryland Development, LLC, a Delaware limited liability company (the “Applicant”), submitted an application (Case No. R-05-09(B)) proposing revisions to the conditions of approval (in Ordinance No. 13-20-648) that required construction of the Ballenger Creek Trail and a spur trail by specific building permit issuance thresholds. These revisions were approved by Ordinance No. 18-02-002, which became effective on March 14, 2018.

In this current application, the Applicant has requested to amend condition No. 9 of rezoning Ordinance No. 13-20-648, to delete references to age-restricted multi-family dwellings in the PUD’s Land Bay D, in order to allow other age-restricted dwelling unit types within Land Bay D.

The Planning Commission considered the rezoning request at its December 12, 2018 meeting, and recommended approval of the rezoning application. The County Council held a public hearing on Case No. R-05-09(C) on April 16, 2019, and voted to approve the rezoning request. The County Council also directed County staff to prepare this Ordinance for signature.

Based upon all of the evidence submitted in this case, the County Council makes the following specific findings of fact on each of the items below as identified in the Ann. Code of Md., Land Use Article §4-204(b) and included in Chapter 1-19 of the County Code:

II. PROPOSED DEVELOPMENT

A. County Plans and Regulations

1. Concept Plan

There are no changes proposed in the current Phase I Concept Plan.

2. Phasing Plan

The Phase I Plan amendment in 2013 did not include any detail other than to indicate that the development would be built out over an approximately 12-year period. The Adequate Public Facilities (APFO) Letter of Understanding (LOU) does include building permit and lot recordation thresholds relative to various road improvement requirements.

3. Land Use Proposal

The mix of land uses approved in 2013 is not proposed to change. There are no proposed changes to the land use, design, or density of the current Phase I Plan.

4. Consistency with the County Comprehensive Plan

The 2010 County Comprehensive Plan, as amended in 2012, designates the property as Medium Density Residential with an allowable density range of 6-10 dwelling units per acre. The proposed amendment to allow dwelling unit types other than multi-family units is consistent with the Comprehensive Plan.

5. Compatibility with Adjoining Zoning and Land Uses

The proposed amendment to condition No. 9 will not affect the compatibility of the proposed development with any adjoining uses or zoning. The property to the north is zoned PUD as part of the Ballenger Crossing PUD and is proposed for commercial use.

6. Availability of Public Facilities and Services

This proposed amendment will not have any impacts on either existing or planned

public facilities or services. The Letter of Understanding (LOU), executed on October 17, 2013, does include building permit and lot recordation thresholds relative to various road improvement requirements.

B. Approval Criteria

§ 1-19-3.110.4 (A) – Approval Criteria for Zoning Map Amendments

(1) Consistency with the comprehensive plan;

The proposed amendment to condition No. 9 is consistent with the Comprehensive Plan.

(2) Availability of public facilities;

The proposed amendment to condition No. 9 will not affect the adequacy of public facilities.

(3) Adequacy of existing and future transportation systems;

The proposed amendment to condition No. 9 will not affect existing and future road networks.

(4) Compatibility with existing and proposed development;

The proposed amendment to condition No. 9 will not affect compatibility with the surrounding development.

(5) Population change;

There will not be any population change as a result of this proposed amendment to condition No. 9.

(6) The timing of development and facilities.

The proposed amendment to condition No. 9 will not affect the timing of the construction of the development.

§ 1-19-10.500.3. – Approval Criteria for Planned Development Districts

(A) The proposed development is compact, employing design principles that

result in efficient consumption of land, efficient extension of public infrastructure, and efficient provision of public facilities;

The proposed amendment to condition No. 9 will not cause any changes that would negatively affect the design of the development.

(B) *The proposed development design and building siting are in accordance with the County Comprehensive Plan, and any applicable community and corridor plans;*

The proposed amendment to condition No. 9 will not cause any changes that would negatively affect the design of the development.

(C) *The proposed development is compatible with existing or anticipated surrounding land uses with regard to size, building scale, intensity, setbacks, and landscaping, or the proposal provides for mitigation of differences in appearance or scale through such means as setbacks, screening, landscaping; or other design features in accordance with the County Comprehensive Plan, and any applicable community or corridor plans;*

The proposed amendment to condition No. 9 will not affect compatibility of the development with adjoining land uses. The amendment, which will allow for other dwelling types such as single-family or townhouses, could be more compatible with surrounding residential uses.

(D) *The proposed development provides a safe and efficient arrangement of land use, buildings, infrastructure, and transportation circulation systems. Factors to be evaluated include: connections between existing and proposed community development patterns, extension of the street network; pedestrian connections to, from, and between buildings, parking areas, recreation, and open space;*

The proposed amendment to condition No. 9 will not cause any changes that would negatively affect the design of the development.

(E) *The transportation system is or will be made adequate to serve the proposed development in addition to existing uses in the area. Factors to be evaluated include: roadway capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts, projected construction schedule of planned improvements, pedestrian safety, and travel demand modeling;*

The proposed amendment to condition No. 9 will not affect road network adequacy. The amendment to allow other dwelling types will result in fewer dwelling units than originally approved, which could only be achieved with multi-family dwelling types.

(F) The proposed development provides design and building placement that optimizes walking, biking, and use of public transit. Factors to be evaluated include: extension of the street network; existing and proposed community development patterns; and pedestrian connections to, from, and between buildings, parking areas, recreation, and open space;

The proposed amendment to condition No. 9 will not affect opportunities for walking, cycling, or transit access.

(G) Existing fire and emergency medical service facilities are or will be made adequate to serve the increased demand from the proposed development in addition to existing uses in the area. Factors to be evaluated include: response time, projected schedule of providing planned improvements, bridges, roads, and nature and type of available response apparatus;

The proposed amendment to condition No. 9 will not affect the availability of public services.

(H) Natural features of the site have been adequately considered and utilized in the design of the proposed development. Factors to be evaluated include: the relationship of existing natural features to man-made features both on-site and in the immediate vicinity, natural features connectivity, energy efficient site design, use of environmental site design or low impact development techniques in accordance with Chapter 1-15.2 of the Frederick County Code;

The proposed amendment to condition No. 9 will not affect natural features within the development.

(I) The proposed mixture of land uses is consistent with the purpose and intent of the underlying County Comprehensive Plan land use designation(s), and any applicable community or corridor plans;

The proposed amendment to condition No. 9 will allow for dwelling types other than multi-family in Land Bay D, which is compatible with the Comprehensive Plan.

(J) Planned developments shall be served adequately by public facilities and services. Additionally, increased demand for public facilities, services, and utilities created by the proposed development (including without limitation water, sewer, transportation, parks and recreation, schools, fire and emergency services, libraries, and law enforcement) shall be evaluated as adequate or to be made adequate within established county standards.

The proposed amendment to condition No. 9 will not affect the availability of public services.

Based upon the findings herein and the record evidence, the County Council has determined that it is appropriate to grant the rezoning request in Case No. R-05-09(C).

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, the condition No. 9 of Ordinance No. 13-20-648 for the Ballenger Run PUD, is hereby rescinded and replaced with the following:

9. The 6.0 acres of land intended to be developed as a 200-unit CCRC independent/assisted living facility (Land Bay D) may, at the discretion of the Applicant, be developed with a maximum of 200 age-restricted dwelling units. The Applicant shall provide one (1) active recreational amenity within Land Bay D. The Planning Commission, as part of its review and approval of a Phase II (Execution) plan for the project, shall approve the type and mix of dwelling units, and location, size, and type of recreational amenity to be constructed within Land Bay D.

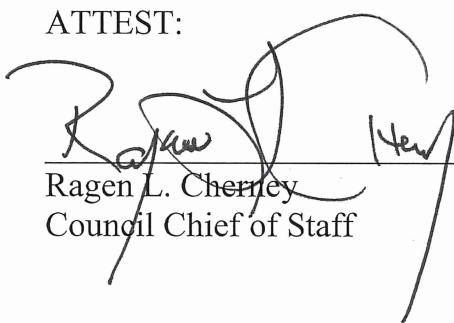
Covenants shall restrict 100% of the dwelling units in Land Bay D of the Ballenger Run PUD project to be age-restricted per the Federal Fair Housing Act and Housing for Older Persons Act of 1995. There shall be a further limitation on the minimum age of permanent residents being 19 years of age. These covenants shall be recorded prior to the recording of the first subdivision plat in Land Bay D. The covenants shall be recorded and made part of the title for each dwelling unit in Land Bay D. Every property owner within the age-restricted development (and the Homeowners Association) shall be beneficiaries of the covenants with the ability to enforce them through an

administrative or judicial proceeding. These covenants are to be reviewed by the County Attorney's Office. The PUD zoning shall be invalid if these covenants are not recorded or if they do not restrict the age of residents in a binding and enforceable manner. The required biannual federal surveys (per 24 CFR 100.307) shall be made available to the County for its review and records.

AND BE IT FURTHER ENACTED AND ORDAINED, that the Zoning Administrator is hereby authorized and directed to make appropriate changes to the PUD Phase I Plan as reflected in this decision.

The undersigned hereby certify that this Ordinance was approved and adopted on the 25th day of June, 2019.

ATTEST:



Ragen L. Cherney
Council Chief of Staff

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND¹

By: 
M.C. Keegan-Ayer, President *TSB*



Michael Blue, Vice President



Jerry Donald, Council Member



Steve McKay, Council Member



Kai Hagen, Council Member



Phil Dacey, Council Member

¹ Council Member Jessica Fitzwater was not present at the public hearing for this case.

Received by the County Executive on 6-26-2019.

County Executive Action: ✓ Approved Vetoed

Jan H. Gardner

Jan H. Gardner, County Executive
Frederick County, Maryland

6-26-19

Date