

JUSTIFICATION STATEMENT FOR REQUESTED AMENDMENT OF REZONING  
CONDITION FOR BALLENGER RUN PUD

REZONING ORDINANCE 13-20-648

The Applicant, SeD Maryland Development, LLC, is the owner and developer of the planned unit development known as Ballenger Run PUD, which was approved by Rezoning Ordinance No. 13-20-648, adopted by the Board of County Commissioners on October 17, 2013 (hereinafter, the "Rezoning Ordinance"). The Rezoning Ordinance permits the development of 197± acres of land located along Ballenger Creek Pike with a maximum of 855 residential dwelling units located within six (6) distinct Land Bays identified on the Phase I Concept Plan (the "Concept Plan"); together with active and passive recreational amenities, including a trail system, community club house and pool; and a potential future elementary school, through the dedication of 13.30 acres of land to the Frederick County Board of Education (hereinafter collectively, the "Project"). The Rezoning Ordinance affords the Applicant flexibility with respect to the development of the six (6) acres of the Project identified as Land Bay D on the Phase 1 Concept Plan (hereinafter referred to as the "Age-Restricted Section"), permitting it to be developed either as a 200-unit Continuing Care Retirement Community ("CCRC") or as 200 age-restricted multifamily units.

This Application requests an amendment to Condition Number 9 of the Rezoning Ordinance, which governs the development of the Age-Restricted Section, in order to i) allow the Applicant to construct varying types of units within the Age-Restricted Section by deleting the "multi-family" restrictive language; and, ii) clarify and document that the development of the Age-Restricted Section conforms to the requirements of the Frederick County Adequate Public Facilities Ordinance ("APFO") that the Project include a program of amenities and other activities for older persons and that the Age-Restricted Section is to be encumbered by restrictive covenants that meet the requirements of Section 1-20-7F(7) of the APFO.

The Applicant is specifically requesting a modification to Condition 9 of the Rezoning Ordinance for the purpose of expanding the types of residential dwelling units permitted within the Age-Restricted Section. In the event that the Applicant elects not to construct a CCRC, Condition No. 9 currently prohibits the Applicant from constructing anything other than multi-family units within the Age-Restricted Section. Condition Number 9 of the Rezoning Ordinance states as follows:

*9. The 6.0 acres of land intended to be developed as a 200-unit CCRC independent/assisted living facility, may be developed as 200 age-restricted multi-family units at the discretion of the Applicant and with the approval of the Planning Commission as part of its review and approval of a Phase II (Execution) plan for the project.*

In the five (5) years since the approval of the Rezoning Ordinance, there has been a notable influx of multi-family units into the residential housing market. The Applicant has

determined that the current need in the age-restricted market is not for multi-family units, but for single family attached or detached units. The Applicant seeks the flexibility to respond to changes that occur in the market throughout the build out of the Project, and thus requests the discretion to construct any mixture of not more than two hundred (200) dwelling units of any type within the Age-Restricted Section, with the mixture of units being within the Applicant's discretion, subject to Planning Commission approval as part of its review and approval of the Phase II (Execution) Plan for the Age-Restricted Section of the Project.

In addition, the Applicant seeks to clarify and confirm that development of the Age Restricted Section conforms to the APFO. The Project includes a complete program of recreational amenities that are available to the older persons residing within the Age-Restricted Section, including a club house and pool, a 1-mile public shared use trail that runs along Ballenger Creek and connects to the existing Ballenger Creek trail corridor, and  $\frac{3}{4}$  of a mile of private trails that run along Piney Branch and connect to other community recreational amenities, such as the club house. The Phase II execution plan for the clubhouse section of the Project will include an additional active recreational amenity, which is still being programmed. The Applicant has agreed to construct one (1) additional recreational amenity within the Age-Restricted Section that will be of particular appeal to older persons, but will (like all of the other recreational amenities within the Project) be available for the use and enjoyment of all residents within the Project. The location, size and type of this amenity will be subject to Planning Commission approval as part of its review and approval of the Phase II (Execution) Plan for the Age-Restricted Section of the Project. Finally, the Age Restricted Section will be encumbered by restrictive covenants limiting development within the Age-Restricted Section exclusively to housing for older persons and excluding secondary school-aged or younger children from residency.

Based on the foregoing, the Applicant requests an amendment of Rezoning Condition Number 9 to state as follows:

**9. The 6.0 acres of land intended to be developed as a 200-unit CCRC independent/assisted living facility 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 the Phase II (Execution) plan for the Project, shall approve the type and mix of dwelling units, and the location, size, and type of recreational amenity to be constructed within Land Bay D. Covenants shall restrict 100% of the dwelling units in Lot D of the Ballenger Run PUD project to be age-restricted per the Federal Fair Housing Act and the 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 Lot D. The covenants shall be recorded and made part of the title for each dwelling unit in Lot D. Every property owner within the age-restricted development (and HOA) shall be**

**beneficiaries of the covenants with the ability to enforce them through administrative or judicial proceedings. These covenants are to be reviewed by the County Attorney's Office to ensure that the PUD zoning district is invalid if these covenants are not recorded and do not restrict age as proffered in a binding and enforceable manner. The required biannual federal surveys (24 cfr 100.307) shall be made available to the County for its review and records.**