

BOARD OF APPEALS

August 24, 2009

7:00 PM

ATTENDANCE: Board Members: Chairman William Malesh, Bob Matthews, Michael Salmon, Henry Barrett, Timothy Thompson, Town Attorney Keith Baynes, Town Planner, Mary Ann Skilling, Court Reporter Carol Beresh, and Planning and Zoning Coordinator Dianna Battaglia.

Meeting was called to order at 7:10 PM.

Chairman Malesh started the meeting by asking the members to read the minutes from the previous meeting for changes or approval of the minutes.

APPROVAL OF MINUTES

Motion was made by Mr. Matthews and seconded by Mr. Barrett to approve the March 23, 2009 meeting minutes as written. **All in Favor; Motion Carried.**

NEW BUSINESS

File No. V2009-01- Variance from 50' setback requirement from adjoining property line for new community building; **PROPERTY OWNER:** Case Edwards Management; **APPLICANT:** Frederick Ward Associates; **LOCATION:** Mill Creek Road, Perryville, MD; Tax Map 802, Parcel 821, Zoned R-3, 6.68 acres.

Ms. Polly Duke and Mr. Lou Schaffer were both sworn in.

Ms. Polly Duke began by saying thank you for having us here this evening. I am the Senior Vice President of Homes For America and we are a non profit real estate development company based in Annapolis, Maryland and we work throughout the Mid Atlantic region. We have fifty-six (56) rental communities in Maryland, Pennsylvania, Delaware and Virginia and that represents about fifty three hundred (5,300) rental units that are for below and moderately below income residents that we serve. And we are in the process of purchasing the site before you this evening, the Concord Apartments that is actually in two communities. One is on Aiken Avenue and the other is on Mill Creek Road and we will be purchasing both of them creating an ownership entity that will own both of the facilities and the intent of the purchase is the buildings are about thirty (30) years old and in need of some renovation. They need a new roof and new windows, new kitchens and new baths, and new HVAC. There are a hundred sixteen (116) apartments at both of the sites. We will not be relocating anyone. We're will be doing all of this as an occupied rehab so that we will, our contractor will come in and he will put in a kitchen in a day. The next trade will come in; HVAC will replace the HVAC unit in a day, and bathrooms, carpets, all of that will be a very sequential process that we'll go through. The total construction, the budget for this project, is about four point seven million dollars (\$4,700,000) and that represents a pretty substantial investment in these two communities and one of the reasons that we are here tonight and one of the changes we are making to the community is that we will be building a community center for the use of the residents. The residents right now don't have a community space to come to on either of the sites. And on the Aiken Avenue site we're actually going to be taking two units that are vacant and turning them into a community space so we won't be dislocating any residents. And on this site we are actually going to be building a freestanding community building that will have offices on site. It will have a large multipurpose room for the residents, a computer library room and an exercise room. So we're really looking forward to it. I think it is a wonderful

investment for the residents who are living there. We have a lot of long term residents, a lot of senior residents who have been there for quite some time and in addition to the community building we will be putting in a tot lot on the site for the children who are there. The community building will have a large overhang that will provide covered space and we'll be installing some bike racks and benches and a big outdoor patio there. And then the rest of the site will be left as is. We will be improving some of the dumpster pads and improving some of the landscaping on site. That's basically it in a nutshell of what we're proposing to do. We brought our civil engineer here this evening to talk more about the specifics about our plans. I know some of you have questions but if there are more specific questions about us, Homes For America, and our plans please ask.

Mr. Barrett asked are these units based on income levels. Will that process continue?

Ms. Duke responded yes it will.

Mr. Malesh asked what are your income levels based.

Ms. Duke replied the income levels are based on the Maryland Income Level for the tax credit range and the rents for these are probably anywhere from five hundred to eight hundred dollars (\$500. - \$800.) a month, depending on the kind of unit and the number of people in the family.

Mr. Malesh responded so the rent is based on the number of people living in a unit as well?

Ms. Duke replied that is the income limit. So if you have two working, if it's a couple and they're both working their income is going to be higher than a mother and child. So her income would be, feasibly it would be less.

Mr. Malesh stated like how they do the school lunch program.

Ms. Duke responded correct. But it is a way to maintain affordability for a resident.

Mr. Barrett asked is it normal for these types of apartments in which rents are based on income, is it normal for them to have a community center and things like that?

Ms. Duke replied it is now. The State of Maryland, when we apply for the tax credit which is the primary financial opportunity that we have to develop these properties, it is awarded on a competitive basis and they like to see the communities that they are funding actually are places where residents would seek out to live. And so they have a list of amenities that they like to see in residential communities for those State funds and most of them will have at least a multi-purpose room at a very minimum. A place for the residents to gather for resident meetings; a place for children to play. But Homes For America, one of the things that I think is unique about Homes For America we actually have a whole resident service program and so we meet with our residents, we've been meeting with the residents, in fact we've scheduled a meeting for September 15th at the library where all the residents will come together. We have to meet off site right now. We have no place for the residents to even come to hear about the improvements that we're proposing to make there. So we are going to tell them about all of the changes that we're making but yes, more opportunities for after school, we'll have an after school program for the kids. There'll be someone that we bring on site to do computer training. Both of the communities will have their own computer room so seniors will learn how to use the computer. We'll have movie night, all different types, reading, after school, lots of different programs. They have some health programs, they'll have a health practitioner come in probably, as needed to the

communities and do blood pressure screening and things that they can do at a site like that. But we meet with our residents to make sure that we sort of understand what their needs are; that we don't just come in and set up programs for the residents. We have a series of meetings that we can say here we are, these are the things that are available to us. We've talked to a number of providers in Perryville and we have space that they can come in and offer programs on site using our facilities.

Mr. Lou Schaffer stated I am a Project Manager with Frederick Ward Associates, engineers for the project. We're here today before the Board seeking a variance from Section 205.3.d.(1) R-3 District-All buildings and structures shall be set back a minimum of fifty (50) feet from the right-of-way line of any public street or adjacent property line. This setback shall be exclusively devoted to landscaping and open area and shall not be occupied by any building, structure, or off-street parking area. So I want to take a little time to explain why we've located the building where we have. There are a couple of reasons. Number one is looking at the topography when you come from building 1500 which is the building to the north east of the community building there is about fifteen (15) foot of grade that falls down towards the community building where it's now located. At that point on the site there is sort of a plateau where the lot flattens out and then it starts falling off again into the storm water management area. So in order to minimize the least amount of disturbance to the site it gives some relief from the tenants of building 1500, again as I mentioned before, we pulled the building down further down the site closer to the tot lot that way as parents are out watching, if they're in the community building or out on the patio there is some parental supervision that could go on in relationship to the other open space amenities that are being located. As far as the sum of requirements for a variance, I'm going to refer to Section 63.2,a. *If the applicant complies strictly with the provisions of the Chapter, he can make no reasonable use of his property.* My basic answer to that is that when you look at the existing buildings in relationship to the boundary of the property the existing buildings are not in conformance. If we were to try to move the building outside of that fifty (50) foot setback that would require redoing and seriously interrupting the traffic circulation pattern of the site thusly losing some parking spaces that would put us well below what is needed by Code. Item b of that same section:

b. That special conditions or circumstances exist that are unique to the subject property or structure and that a literal enforcement of the provisions of this Chapter would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification.

(1) The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public,

Mr. Schaffer stated the answer is yes, the existing buildings don't conform on the site and it's the place this building could go that it would be more centrally located to everyone and have the least impact on existing parking and traffic patterns.

(2) The hardship relates to the applicant's land, rather than personal circumstances,

Mr. Schaffer indicated it is in the land.

(3) The hardship is unique, or nearly so, rather than one shared by many surrounding properties,

Mr. Schaffer commented it is unique in the sense that it is an older community that is thirty (30) to thirty-five (35) years old and built under the Code that was in effect at that point in time and the site does not meet the current Code as is currently in effect.

(4) *The hardship is not the result of the applicant's own actions, and*

Mr. Schaffer stated my response to that is the site is what it is. It is an existing condition that we are dealing with and we're trying to maintain the storm water management and again the circulation to the site, so we think this is what makes the best sense.

(5) *That strict enforcement of the provisions of this Chapter would deprive the property owner of rights commonly shared by other owners of property in similar area.*

Mr. Schaeffer reiterated again I just refer back to the fact that the site is already impacted and I'm sure that other types of sites would have the same type of impacts. Then under that same section:

c. *That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Zoning District or the Critical Area Overlay District.*

Mr. Schaffer continued, and the answer to that would be yes.

d. *That the variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming which are related to adjacent parcels.*

Mr. Schaffer indicated this variance is self imposed. The parking and the buildings exist and there is simply no other open space area large enough to locate this building.

e. *That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.*

Mr. Schaffer stated again, there would be no profitability for the use of this building. This is a community based building; it's for the enhancement of the community that is there for various purposes as explained.

f. *That the proposed variance is consistent with the Town of Perryville Comprehensive Plan.*

Mr. Schaffer commented and yes it is.

g. *The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land.*

Mr. Schaffer stated once again I'll just make reference to the fact that the buildings and everything on this site is existing and we would not be impacting anyone as the neighbors or affecting the site because of the condition that the site is in at the present time.

- h. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and the Town's Critical Area Program and shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.*

Mr. Schaffer noted that answer is no, the property is not in the Town's Critical Area. So, with that I'll certainly take any questions you may have.

Mr. Salmon questioned the patio I assume is at the west end of the building at the overhang.

Mr. Schaffer replied yes, it is on this side here.

Mr. Salmon asked how far is this proposed overhang?

Ms. Duke replied twelve (12) feet.

Mr. Salmon asked and how far does the patio extend?

Ms. Duke responded the width of the building.

Mr. Salmon asked how far out does it extend.

Ms. Duke reiterated it is twelve (12) feet by the width of the building.

Mr. Salmon indicated Ms. Skilling has recommended that we approve this variance with the condition that landscaping is done behind the clubhouse, and is there any reason that can't happen.

Mr. Schaffer replied yes, it can happen. We have submitted a Landscape Plan that was sent in Wednesday of last week, Wednesday or Thursday it was mailed, so Ms. Skilling may not have had time to review it. But we are proposing some landscape behind the building as well as foundation plantings. One of the other things that we are also proposing is to do some plantings along Mill Creek Road because right now the site is open. And we want to provide some screening and some buffering there. There are also some picnic tables and a grill there to provide another open space area.

Mr. Matthews stated I have a question about ownership. You mentioned that Homes For America and I see on here the property owner is listed as Case Edwards Management. Can you explain that?

Ms. Duke responded we are entering in a joint venture partnership. In order for us to actually apply for the tax credits the new ownership entity is being created that will actually purchase both of the communities and they will assume interest in this limited partnership of which they are a partner.

Mr. Matthews asked that transaction has not happened yet.

Ms. Duke stated no, we were intending to close on our financing with the State in November so that transaction will occur at the same time. We try to cut down on legal fees by doing it all at one time.

Mr. Barrett commented so the organization that is actually applying for the variance does not currently exist.

Ms. Duke replied they do exist. We're joint venture partners and we're all in Annapolis and we are doing this together and we take turns actually doing the work and coming to the meetings. They were here at the Planning Commission meeting.

Mr. Barrett stated I went through these items under b, one through five, and what I am interested in is did you consider perhaps another design for the building that would take advantage of the width of the property as opposed to the challenge here for instance with the depth.

Ms. Duke responded well one of the things that we did look at, the multi purpose room is the whole width of the building so in order to have a meeting space where we can gather as many residents as possible we needed to have it as wide a building as possible, and so we need to have two bathrooms in a building that will have this many residents in it. We needed to have office space. We needed to have a computer room and a kid's room there. So we did think about the design a lot. It's a twenty one hundred (2,100) square foot building and we did think about that. You enter from the front not quite the center, and all of this over to the left is the large multi-purpose room with a warm-up kitchen in it. In order to have enough space we couldn't squeeze the building out too much and have a long, skinny room that couldn't really be utilized. The office space is a lot easier in terms of designing the office space and computer room because they're much more intimate spaces so that didn't affect it that much but the multi-purpose room needs to be large enough for large gatherings. I think in terms of scale, it certainly is within the scale. It's a one story building with a pitched roof.

Mr. Matthews asked Ms. Skilling do you have a Landscape Plan.

Ms. Skilling replied I do have a Landscape Plan and I did just get it. I haven't really looked at it but they are doing some amenities, the benches and all, and there was consideration at the Planning Commission meeting that the tot lot that is in this area is going to be upgraded as part of this whole redevelopment.

Ms. Duke indicated we have twenty thousand dollars (\$20,000.) budgeted for the replacement of the tot lot.

Ms. Skilling stated when we did a site visit it really needs to be upgraded. The one thing on this site plan I do note that I recommended as a condition of the approval, yes that additional landscaping. It was suggested using the landscape buffer plan at the end of our Ordinance as part of this because it would buffer this area from the other property, the property along Route 40. And that property along Route 40 is vacant. And I think you have a copy of the aerial topography that we gave you to see that. And it does drop off behind there. There is a considerable slope between, from the back of this building to the property line. So we just thought that additional buffering there would just be normal what we recommend where you have a division of parcels.

Mr. Barrett asked Ms. Skilling, the property on Route 40 if they wanted to construct the building in which they wanted to infringe on the setback, would granting a variance here have any impact on them coming forward.

Ms. Skilling replied that would be new construction and it is in the Highway Corridor Overlay Zone as well so they would have a lot more restriction with what they can do and it would all be

new construction that we would be looking at. This is based on old construction that predates our Ordinance and anything new on that site would have to follow the Ordinance now as it is today. So this wouldn't have any impact on that at all.

Mr. Schaffer indicated and just for clarification as far as the Landscape Plan, we have sent that in for Ms. Skilling's comments and it's not final. We need to go back to the Planning Commission for Final Site Plan approval and that's more predicated upon your approval as well as getting some engineering approval from Cecil County, Storm Water Management with Cecil County Soil Conservation, which we're working on that. Those are the approvals needed at the moment.

Mr. Barrett asked so if a variance is granted, it's going to be granted in terms for a specific setback of ten (10), twenty (20) feet or something like that.

Mr. Baynes stated it appears they are asking for a twenty (20) foot variance.

Mr. Malesh commented and we can grant that as long as they comply with the landscaping requirement as well. Is there anyone else who would like to speak?

Ms. Skilling introduced Ms. Michelle Linkey, the new Planning & Zoning Commissioner, to the Board members.

Mr. Barrett stated this is a project that I will gladly support. I grew up around a number of communities where housing is based on income levels and I've yet to see a community center.

Mr. Baynes further explained Ms. Skilling's recommendation here is that it be a landscape plan in accordance with the Appendix B in the Zoning Ordinance and that will be what I put in here.

Motion was made by Mr. Barrett and seconded by Mr. Matthews to approve the application for a 20 foot setback variance to allow construction of the community center conditioned that an approved landscape buffer yard is installed consistent with our Ordinance requirements to the rear of the community center building along the property line of the adjacent property. **All in Favor; Motion Passed.**

Motion made by Mr. Barrett and seconded by Mr. Matthews to adjourn the meeting at 7:40 p.m. **All in Favor; Motion passed.**

Respectfully submitted,

Dianna M. Battaglia
Planning & Zoning Coordinator