

January 25, 2011

The regular meeting of the Board of Appeals was called to order on Tuesday, January 25, 2011 at 7:30 p.m. at the Town Hall, 39 Hickory Avenue, Bel Air, Maryland.

MEMBERS PRESENT: Roy Milan, Chair
Gregory Adolph
Clarence Fry
Bruce Linder

ABSENT: George Gallant

IN ATTENDANCE: Robert Syphard, Acting Director of Planning
Charles Keenan, Town Counsel
Robert Preston, Town Commissioner
Joan Suitt, Recording Secretary

Mr. Syphard reported the cases being presented tonight were advertised in the newspaper of general circulation and the properties were duly posted.

PUBLIC HEARING

Request of T. J. Brightman for Special Exception

Mr. Syphard advised this request is from T. J. Brightman for a special exception as noted in Section 165-26.C and Table 3-7 of the Town Development Regulations to convert the existing residential structure in the R-2 Transition Overlay District for professional office use. The Staff Report dated January 12, 2011 was prepared by the Planning Department during the ordinary course of business and is being offered as evidence in this case. All abutting property owners have been notified.

The applicant owns properties located at 208 and 210 Archer Street and recently purchased a residential unit located at 315 George Street. The subject property abuts 210 Archer Street. The applicant plans to expand the residential unit to include a full second floor and convert the residential unit for professional office use. All the applicable plans have been submitted and the request to convert the unit for professional office use requires a special exception from the Board which is being requested this evening.

Mr. Syphard called on Mr. Brightman to present his case.

Mr. Brightman stated he purchased the vacant property at 315 George Street and the intent is to renovate the structure and use it as office space for his advertising business. He has seen growth in the past three or four years and will relocate employees to this address. Mr. Brightman advised he has contracted with Fred Ward and Associates and Richardson Engineering and Mr. Jasinski and Mr. Richardson will speak about the project.

Mr. Jasinski from Fred Ward and Associates distributed a copy of the site plan and renderings of the building to the Board members. He stated the lot size of 315 George Street is 6600 square feet and on the lot is an unoccupied stucco home. Mr. Jasinski stated they are looking to expand the size of the dwelling by squaring off the back and putting an addition of approximately 200 square feet. They are looking to have a driveway entrance through Bright Idea's current property on Archer Street and exit onto George Street. They will provide seven on-site parking spaces to the rear of the building. Mr. Jasinski explained the landscape plan shows existing trees in the back that will be taken down and replaced with street trees and foundation plantings along the front and the side.

Mr. Jasinski noted Mr. Brightman will be placing about six people in the house and stated the rendering shows residential character and will mirror 210 Archer Street.

Chair Milan inquired if these are six additional employees. Mr. Brightman advised these are existing employees that are currently employed. Chair Milan asked if they see any expansion in the number of employees as he is concerned about parking. Mr. Brightman stated potentially but not at present. He further explained there is additional parking at the Archer Street property and does not anticipate a lot of traffic.

Mr. Adolph noted this proposal is under 5,000 square feet of disturbance therefore keeping you from any additional stormwater management requirements. Mr. Jasinski agreed. He then inquired about the Town's ordinance on the proposed landscaping. Mr. Adolph felt the landscape plan looks sufficient but wants to make sure it will meet requirements.

Mr. Rick Richardson explained the landscape plan is to try to get as many trees on the site as possible. They will be taking down four trees, replacing them with two trees, and paying a fee in-lieu to compensate for the other two trees.

Chair Milan inquired if there is any exterior lighting on the building. Mr. Richardson stated there will be some.

Chair Milan called for any other comments.

Mr. Syphard pointed out the drive off of George Street is indicated at 16 feet so you can accommodate ingress and egress and inquired about the intent of the driveway. Mr. Jasinski advised that it is still open for discussion. Mr. Syphard advised if you choose to go in one direction, he would suggest limiting that impervious area and reducing the driveway width. Once done however, you have limited yourself to one way.

Mr. Adolph noted in the staff report it says a proposed future parking lot connection if provided would provide a flow through traffic pattern. In viewing the site plan, it seems as if the flow through is proposed. Mr. Jasinski agreed. Mr. Adolph then asked if the intent is to have the flow through parking with the reduction of the lane off George Street from 16 feet to something smaller. Mr. Jasinski agreed.

Chair Milan called for a motion.

Mr. Adolph moved and Mr. Fry seconded the motion to approve a Special Exception of T. J. Brightman as noted in Section 3, Subsection 165-26.C of the Town Development Regulations to expand and convert the existing residential structure on the property located at 315 George Street for professional office use. Based on the staff report and testimony provided at the hearing, the Board found that the proposed expansion and conversion would not adversely impact the surrounding properties. The Board conditioned the approval on completion of all necessary building and site work and the issuance of a Use and Occupancy Certificate prior to any commercial use of the structure.

Chair Milan called for the vote.

Ayes: Mr. Adolph, Mr. Fry, Mr. Linder, Chair Milan

Nays: None

The motion carried.

Request of Mike Jones for Parking Waiver

Mr. Syphard reported Mr. Jones is requesting a parking waiver pursuant to Section 165-51.C(3) of the Town Development Regulation for a reduction of required parking for the property located at 227 Gateway Drive. A Staff Reported dated January 13, 2011 was prepared by the Planning Department during the ordinary course of business and is being offered as evidence in this case. All abutting property owners have been notified. The applicant is the

owner/developer of the Legacy at Gateway condominium development located at the end of Gateway Drive. The property is currently being developed as an elderly housing complex. The applicant has proposed converting future Sections II and III for multi-family use. Multi-family residential use currently requires 2.5 parking spaces per unit. The applicant's proposed plan for that conversion provides for 1.68 spaces per unit. The applicant is requesting a parking reduction or waiver in order that the 1.68 space allocation can be used for the parking plan submitted to the Planning Commission as part of the site plan approval process.

Mr. Syphard called on Mr. Jones to present the case.

Mr. Mike Jones, 21 Powell Avenue explained he is here tonight requesting a reduction of parking to 1.68. He stated the current regulations cannot address all the parking possibilities for projects in the Town and the Regulations do not become meaningless because of a waiver granted or requested. Mr. Jones reported the current regulation assumes that mid-rise apartments or condos and townhouses have the same parking needs, which is false. He noted the Staff Report does not dispute that less than two spaces may be adequate but suggests the Town Board should create another category for common entrance multi-family condominiums. He stated the regulations as written today are false. The regulations are 357 pages long and contain nothing that requires site specific data. It seems illogical to have site specific data which can only be acquired after the project is built to justify a parking waiver for a parking lot that is already built. Mr. Jones stated the rates allow and the Town accepted substantially similar uses to provide the data for both traffic impact and sewer amount. Mr. Jones feels parking is no different. The basis for a parking waiver is not for uniqueness or practical difficulty and it does not matter that the site is large enough to provide the required parking; it only matters that the parking is adequate for use on the property. Mr. Jones stated this request has the same or exceptional difficulties as the Harford Village South project that successfully presented at your last hearing. Mr. Jones advised for a parking space reduction one of three conditions has to be met and read Article II, Chapter 165.Zoning – Section 7 Development and Performance Standards. Mr. Jones then advised if English Country Manor came in for approval today using 2.5 spaces they would have 422 cars using 998 spaces. There is a cost that is encumbered to the owners of the property. At the requested 1.68 spaces there would still be 248 spaces left for visitors and overflow. Mr. Jones explained if the 2.5 spaces have to be put in, he will have to build a retaining wall around the property with a four foot chain link fence on top within ten feet of the Ma and Pa trail. The fence will collect all kinds of trash. This will be encumbered onto future owners of the property. He would like to avoid the retaining wall as it takes away from the setting of the project.

Mr. Jones further explained there will be additional cost to future owners for maintenance of parking not being used, i.e. plowing, striping, potholes, and sealing. There will be negative environmental impact with the additional unnecessary impervious area and additional stormwater runoff. The Town will make sure that we comply with the plans but at some point a failure or maintenance will be required and that cost will be passed to the Homeowners Association. The project is broken into three distinct sections and this request is for the second and third phase only. The parking for the first phase, which most of the people are here tonight for, is unaffected.

Mr. Jones asked the Board to look at the data that he distributed to them and went over the figures for parking at 55 and over housing, multi-family condominiums – private ownership, and rental apartments. Mr. Jones advised we have a benefit of having a street adjacent to the property which has been designed for parking on both sides. There will be adequate parking (approximately 70 spaces on the street) when the adjacent businesses do not have use for the parking at night and weekends. Mr. Jones stated data was presented to the Board of Appeals indicating that 1.4 was adequate for both residents and visitors; he is providing a 20% cushion plus the available parking off site. The data suggests that 1 space per 3-5 units is an average which is .2 or .33 spaces per unit. This request provides almost one

space per two units or .5 parking. Mr. Jones asked the Board to consider the traffic count and parking plan and to consider the difficulty this will create.

Mr. Adolph inquired if the numbers presented this evening reflect current data. Mr. Jones agreed and said it was updated January, 2011.

Mr. Keenan inquired if he has consulted a traffic expert. Mr. Jones advised he has spoken to one. Mr. Keenan further inquired if the expert was present. Mr. Jones responded no, but would ask for a postponement if needed. Mr. Linder inquired where the data came from. Mr. Jones stated they were his counts. Mr. Linder advised he could not make a judgment assuming these figures are totally objective.

Mr. Jones asked for a postponement in order to bring the expert in.

Mr. Keenan advised you cannot ask for a postponement as you have presented evidence and people have turned out for the hearing. He further stated you insisted the hearing be conducted.

Chair Milan advised the case heard at a previous hearing clearly was not a precedent setting case. Even if it were, there are huge differences between properties that have been in existence for many years all but twenty-one units of which are grandfathered out of the current parking requirements. Chair Milan explained his concern is that this may not be the venue to take a look at this request and he does not feel the Board should be the ones to target shoot the Planning Commission's findings. This is a new project and the Planning Commission came up with those numbers for new projects. It may be they looked at existing projects around Town of rental and owned condominium units where parking is inadequate. Chair Milan felt the data presented is very good whether compiled by your own observation or someone who has credentials. He feels the Planning Commission should look at this as the Board of Appeals cannot invalidate a regulation unless there are extenuating circumstances. In the case that was heard a month ago, they had experts look at that property and said this is what the usage has been for the property and have no reason to expect that the total amount of usage per unit is going to change just because we add twenty-one units. That was not the same thing as a whole new project.

Mr. Jones stated he would be happy to bring in a traffic engineer to validate the figures. Whether the Planning Commission decides to create another category, it does not adequately address this particular use. The staff does not argue in their Staff Report with the fact that two spaces or less may be adequate. The situation now is a standard for a blended use. Everything is lumped into the same category. It is now very unlikely you will get large projects in the Town. Assuming that it goes before the Planning Commission or Town Board, 1.68 still makes sense even if that is in place. Mr. Jones understands why his data is being questioned by the Town attorney and would be happy to postpone and bring in an expert.

Chair Milan stated he will not dispute the numbers but if we as an appeals board grant a parking waiver for your project that is going to negate the 2.5 space requirement. It would set a very clear precedent. This request is not the same as what went on at the last meeting. Anyone who comes in with a project small or large requesting a parking waiver would say, "you did it for Legacy, why are we different?" Chair Milan stated this Board was not the one making the 2.5 regulation and cannot get comfortable with nullifying it.

Mr. Jones stated that he disagrees on the nullification part of this and does not see the standard is going to be any less relevant to those projects having ten, twelve or twenty units. The standard is going to be a benchmark and will not fit every circumstance. You need to set the target so you are hitting the bulk of the issue. The ones that clearly don't fit inside that are subject to come before you.

Chair Milan does not see anything different about this project.

Mr. Keenan advised the Town has said there is a distinction between a single entrance multi-family unit that Mr. Jones proposes and a regular townhouse with multi-family. It may well be that the data supports a different standard for the single entrance multi-family than the standard set forth in the Development Regulations which requires a 2.5. If the 2.5 standard is to be changed, the appropriate venue is the Town Board changing the standard, making a distinction between single entrance multi-family and townhouse multi-family. Mr. Jones stated he does not want a change. Mr. Keenan advised that is what is being requested.

Chair Milan explained that the Board does not have access to information that led the Department of Planning to come up with the parking requirements. If we grant waivers to requests that are not isolated to a specific circumstance or set of reasons, we do in fact challenge the Planning Commission and void that regulation. The regulations say 2.5 spaces per unit unless there is reason for a reduction.

Mr. Jones stated the comment means you are going back to the site-specific data issue. This is a project that has not been built out yet, so there is no data. For the purposes of tracking, the Town, in the past, used a similar use to provide the data to support the request. If you wait until the project is built to get data what is the point of the waiver? Chair Milan felt the waiver is not the way to accomplish this, not for this project. All the arguments you are making have some logic. The Planning Commission would be the body to approve the request. The Commission is the group that generated the regulation.

Mr. Linder asked in the event that the request is denied, where does it leave Mr. Jones.

Mr. Jones explained he is doing what he can to make the economy work for him. Mr. Jones accepts the reasons, but does not see the argument that the Town Board may be the one to do this. If they look at it, fine, but if they do not what then? This project complies with the conditions of a waiver.

After a slight disruption, Chair Milan asked Mr. Jones if he wished to continue. It was decided to ask for public comments and Mr. Jones would later have the opportunity to speak again.

PUBLIC COMMENT

Ms. Carol Yeager, resident of the senior citizen community Legacy at Gateway advised that the residents all bought there because they wanted some peace and quiet and plenty of parking. Ms. Yeager explained she moved there June 24th and stated little did she know then that the Town Board had approved zoning allowing the developer Mr. Jones to build multi-family homes behind the community and use some of the parking spots. With children, our parking lot will be an area for skate boarding, ball playing, and sledding. This is not about Mr. Jones getting more parking spots, it is all about money. Ms. Yeager noted Mr. Jones is a developer, that is his business, and he wants to make more money. He wants to build multi-family homes because the senior houses are not selling fast enough. What makes him think he can sell multi-family when nothing is selling now?

Mr. Sabatino Tiburzi of Legacy at Gateway stated the 2.5 space requirement of the regulations was done for a reason and he feels it is accurate. He would like to see any decision for a change be made by the Planning Commission. If we do get the multi-family housing, who is to say whether there will be one, four or five cars. Let the Planning Commission be responsible for changing that revision.

Mr. Gary Teter, Legacy at Gateway advised he was told the project would be for housing for the elderly and now that might change. He does not know of anybody that buys 1.68 cars and stated most people have at least two cars. The community was sold to us and a rule was made requiring 2.5 spaces. We ask him no more or less, to fulfill a responsibility to those who have already bought in the neighborhood and continue the same development we thought we were getting.

Mr. Richard Price, Legacy at Gateway stated he has lived in this community for a year and a half. Like everyone else here tonight, he moved into the community that was age restricted. He loves children and has three of his own who are grown. He does not have anything against children, however when the development was advertised as 55 and above all of us bought here realizing we would not have issues with children. If this is opened to multi-family housing, you are going to have a husband and wife who have to work with children. As the children become older they will also want a vehicle. The 1.68 parking spaces is not going to support the number of people in a multi-family situation.

Mr. Joe Potter of Legacy at Gateway opposes the change in the parking spaces which is about a 33% reduction. Parking is a problem at many developments and this is what Mr. Jones told them at the very first meeting of the Gateway condominium when bombarded with comments about parking problems. In fact, an owner suggested he change parking to assigned parking. Mr. Jones indicated this would make the problem worse as a chain reaction would happen if just one person did not park in their designated space. He agreed with Mr. Jones, parking is a problem. Mr. Potter advised he only stays at the Gateway a few months of the year and at another condominium has a volunteer job every morning giving out parking violation notices. After being threatened and cursed at, he is generally told the vehicle owner found another vehicle in their assigned space and could not find an empty parking space. Parking conflicts generally result from an inadequate supply. This supply is caused by failure to consider parking that effectively accommodates change and uncertainty. For example, at the Gateway there is a path that leads to the Ma and Pa Trail from its parking area. He does not think anyone thought or considered who made the regulations the fact that some using the trail are now parking on the Gateway parking lot. Mr. Potter agrees with Mr. Jones, parking is a problem.

The Gateway is an automobile dependent location, however Mr. Potter stated he would be remiss if he failed to point out the main reason for buying at the Gateway was that we would not have small children running around the area leaving their toys. Most of us are out of the nesting phase of life. We should not confuse parking requirements for age 55 developments with other housing. Many Gateway residents still work, have large cars, entertain frequently and have large extended families that visit. This Sunday, we are having a party at my unit and attending will be my three adult children and their families, my sister-in-law and her family, my nephew, and at least one family friend. When you add their six vehicles with the two that we own you will readily see that the 1.68 parking space is not accurate. Yes, he totally agrees with Mr. Jones, parking is a problem. Many progressive planners have changed to optimum parking; these planners feel the best way to address parking problems is to simply eliminate minimum parking requirements. The problem with optimum parking is that it calculates and grossly underestimates future parking needs. Therefore, he agreed with Mr. Jones, parking is a problem.

Mr. Potter stated that if the parking reduction is accepted it will become a much bigger problem to people living at the Gateway. He requests that the Board not to approve the reduction in the parking requirements and strongly encourages this Board to keep the current Gateway parking requirements.

Mr. Lyle Brennen a resident at Legacy at Gateway and Vice President of the Homeowners Association distributed a list of concerns regarding the parking waiver. He understands this hearing is about parking and not multi-family housing and noted the following concerns. The requested parking waiver from 2.5 to 1.68 is a 33% reduction in parking space and is less than the two spaces per unit required for age-restricted housing.

Mr. Brennen stated as far as the Homeowners Association having to deal with paving and repairs of pots holes, he feels it is up to the association to decide whether the cost of maintaining a larger parking space is worth it not to have the hassles that go with that type parking. Mr. Brennen reported the two most common complaints received by the Board of Directors of the Association are about pets and parking. There seems never to be enough parking. Our

community is average and the complaints about parking are not too serious; therefore two parking spaces per unit have worked for us. He does not understand the logic why 1.68 would be more suitable for multi-family housing when two is suitable for age restricted housing.

Mr. Jones stated there is parking for seventy cars on Gateway Drive, which is a public road.

Mr. Brennen pointed out on the site plan a significant portion of Gateway Drive is curved and difficult to park. Parking of about a dozen cars are parked on the near side of Gateway Drive not on the far side at all. Along the straight portion, several parking spaces are going to be taken up by a bus stop. In addition, a significant number of parking spaces along both sides of Gateway Drive are taken up by business traffic, i.e., vans, tractor-trailers, box trucks, and other commercial vehicles. These are used during the day and overnight; more realistically the estimate to park there would be 20.

Only two of the proposed twelve multi-family buildings would actually abut Gateway Drive. The other ten buildings would be separated from Gateway Drive by a line of other buildings and possibly a fence that would separate the two communities. That would make Gateway Drive more than one hundred yards away from the multi-family housing and would not be suitable for overflow parking.

If part of the reasoning for requesting a parking waiver is because parking is available on Gateway Drive, why wasn't this logic applied when building the first five buildings where two applied. Why wouldn't have 1.68 been requested in that case? Why shouldn't the next two phases of twelve buildings also meet the existing parking requirement as the first phase?

It is natural and normal for people to want to park in front of their own home or building. They do not want to park in front of other buildings, in distant parking lots, or distant roads. For the simple things of carrying groceries into the house, people want to be able to park nearby.

Multi-family housing needs more parking space than age restricted, not less. With younger couples, both husband and wife tend to have cars; teenage children have cars, and more guest and visitor traffic.

If Legacy at Gateway community is built-out as Mr. Jones proposes, 76% of the units would be multi-family housing and 24% age restricted. These two parts of the community may be separated by a barrier fence and would bar access to Gateway Drive for most of the multi-family housing.

The proposed twelve buildings of Phase II and III would each contain eighteen units, a total of 216 multi-family units occupying a relatively small space. High-density housing of this nature needs more space for parking, not less.

Once Mr. Jones walks away at the completion of this development, it is left to the homeowners association to deal with the inconveniences, the hassles and battles that come with tight parking. It is then too late to do anything about it.

Residents and visitors do not want to be cruising around the community looking for a parking space, having to park in front or back of other buildings, or have to walk up to a city block to get to their home.

The Town of Bel Air presumably has good reasons for setting the parking requirement for multi-family housing at 2.5 parking spaces per unit. Those reasons should apply in this case.

Mr. Brennen presented to the Board of Appeals a petition signed by residents of Legacy at Gateway supporting this request.

Ms. Jacqueline DeLisle, Esq. with Brown, Brown, and Young represents the partnership who owns the commercial property directly across the street from the proposed development. Ms. DeLisle stated she would like the Board to consider what type of request is before you. In order for anyone to get to the Board you have to find a vehicle

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or a way. The vehicle Mr. Jones is using is called a parking waiver request and directing it to the Board. He is using site data that would be better presented, as noted four or five times this evening, for an argument to the Town Board or Planning Commission suggesting a code change. He has failed to present any site specific data, the very thing that Mr. Gessner did at a hearing which considered a parking waiver request just a month ago. In that case, there was site specific data that was tied carefully to each point of the waiver request submitted. We don't have this here. We have a request using data which is unsupported by expert testimony, although I am not contesting whether the traffic counts are accurate or not. Mr. Jones elected to go forward this evening, so what Mr. Jones has is what he has been able to present to you. The arguments that he used are inappropriate for the Board to consider - a code change that would affect the standards to be set for every community that would be coming in to develop whether age restricted or not age restricted.

Ms. DeLisle stated that one other key factor that needs to be considered is, once this waiver request is in effect it is not what has already been done but what is going to come subsequent. Mr. Jones is electing to create two very separate and distinct communities on a site which already has an approved site plan. That approved site plan was for aged restricted housing with certain conditions imposed by code, and certain other conditions imposed on Mr. Jones by the Planning Commission as part of the original approval. Mr. Jones had the opportunity to address this issue several months ago when the Board considered changes to the code and in fact enacted a code change to the age restricted parking from 2.5 to 2.0. At that time, it was decided not to change the non-age restricted requirement. We are seeing here a request to first give Mr. Jones a change from the parking requirement and then create two separate and distinct communities. I do not know how those communities may be laid out or the requirements that may be imposed to create a separate and distinct area between those two communities, but the Planning Commission will have to receive a revised site plan and determine what kind of access points, what kind of setbacks from roadways and what kind of setbacks from the existing age restricted community should be enforced. That is not the vehicle that is in front of you tonight. Tonight is just a very simple question, should a waiver from the parking requirement be granted. In order to do that, you have a code that is very specific and simple and set forth in Section 165-51.C which provides that a waiver can be granted if the requirements for parking and loading would result in a particular or exceptional difficulty upon the owner of the property and such relief can be granted without substantial impairment of the intent or purpose of the code. Staff reports are intended as guidance and you rely on the Planning Department to analyze the code and apply it to the site specific project that is in front of us. In this case, your staff report is very much to the point that this is the wrong vehicle for the requested action; there is no site specific data as this is a new project, and if you approve this you will tear the heart out of a code that the Town just enacted and revisited a few short weeks ago. The first question would be if the wrong vehicle pulled up in front of you it is time to get him off that stage of the expressway and tell him he needs to go to the appropriate location to plead his case. The Board has to look to see if the standards were met and the code says without A and B being met you don't have the authority to grant the waiver request.

Ms. DeLisle stated we should not be here on a parking waiver, there is another avenue for that. If Mr. Jones is going to create two separate communities, he needs to bring in a plan that will meet the Town recommendations that address setbacks, access points, and open space requirements and how people are going to access the overflow parking in the age restricted section if in fact that is going to be a separate and distinct community from the new community we are hearing about tonight.

Chair Milan called for other comments from the public. Hearing none, Chair Milan inquired from Mr. Jones if he had anything further to add. Mr. Jones advised no.

Chair Milan closed the public hearing and asked for the Board's comment. Hearing none, he called for a motion.

Mr. Fry moved and Mr. Linder seconded the motion that the request for a parking waiver pursuant to Section 7, Subsection 165-51.C(3) of the Town Development Regulations to reduce the parking space requirement for multifamily units proposed to be constructed in the Legacy at Gateway condominium project from the required 2.5 spaces per unit to 1.68 spaces per unit be denied. Based on the staff report, testimony provided at the hearing and the applicant's supporting documentation, the Board found that the applicant's request to reduce the parking requirement for multifamily units did not meet the conditions stated in Section 7, Subsection 165-51.C(3)a of the Development Regulations. The proposed units in the Legacy at Gateway community are no different in character than other multifamily units in and around the Bel Air area. Approving the request to reduce the parking requirement from 2.5 spaces per unit to 1.68 spaces per unit would negate the parking space requirement established by the Regulations for multifamily units and would therefore substantially impair the purpose of the parking regulations.

Chair Milan reported there have been good points made both ways this evening and feels it is not within the Board's scope to proceed with the waiver.

Ayes: Mr. Adolph, Mr. Fry, Mr. Linder, and Chair Milan

Nays: None

The motion carried.

APPROVAL OF MINUTES

Chair Milan moved and Mr. Linder seconded the motion to approve the minutes of the November 23, 2010 meeting as submitted.

Ayes: Mr. Fry, Mr. Linder, and Chair Milan

Abstained: Mr. Adolph, as he was not present for the meeting

Nays: None

The motion carried.

BOARD OF APPEALS ELECTION OF OFFICERS

The decision was made to defer the election to the next meeting.

APPROVAL OF POWERS AND DUTIES

A motion was made by Chair Milan and seconded by Mr. Adolph to acknowledge and accept the Powers and Duties of the Board of Appeals, 2010 addition, as presented at the November meeting.

Ayes: Mr. Adolph, Mr. Fry, Mr. Linder, and Chair Milan

Nays: None

The motion carried.

The meeting was adjourned at 9:05 p.m.

Roy Milan, Chair

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May 24, 2011

The regular meeting of the Board of Appeals was called to order on Tuesday, May 24, 2011 at 7:30 p.m. at the Town Hall, 39 Hickory Avenue, Bel Air, Maryland.

MEMBERS PRESENT: Roy Milan, Chair
Gregory Adolph
Clarence Fry
Bruce Linder

ABSENT: George Gallant

IN ATTENDANCE: Robert Syphard, Department of Planning
Charles Keenan, Town Counsel
Robert Preston, Town Commissioner
Joan Suitt, Recording Secretary

NEW BUSINESS

Public Hearing

Request of John S. Richardson – Variance from Section 9, Subsection 165-63.A(1) of the Development Regulations

Mr. Syphard advised the request of John S. Richardson for a variance from Section 9, Subsection 165-63.(A)1 of the Town Development Regulations. The case was advertised in the newspaper of general circulation and the property was duly posted. The Staff Report dated May 10, 2011 was prepared by the Planning Department during the ordinary course of business and is offered as evidence in the case. All abutting property owners have been notified.

Mr. Syphard explained the subject property fronts only Western Alley which by definition is not a street. Subsection 165-63.A(1) dictates a buildable lot front on street frontage. The purpose of the request is a variance from that requirement. Mr. Callahan, the existing property owner, did ask for this relief in 2004. He received approval as well as an extension in 2006 to build a two family unit on the property. Mr. Callahan was unable to proceed with that development and the variance has since lapsed. The applicant here tonight is asking for a similar variance to develop the lot as a single family residence. Mr. Syphard called upon Mr. Kevin Mahoney who represents Mr. Richardson.

Mr. Mahoney stated Mr. Syphard gave an accurate description of the property and its history. He pointed out the ground level and aerial site plan displayed before the Board. He called upon Mr. Richardson to testify.

Mr. John Richardson, 4520 Oak Ridge Drive, Street, Maryland 21154 is the contract purchaser of parcel 1165 located on Western Alley. The current owner of the property is Mr. Robert Callahan and joined in with the application for the variance.

Mr. Richardson described the property as approximately 100' wide by 124' deep and stated the proposed single family detached home is similar to the surrounding neighborhood. Mr. Richardson advised there are other residential properties on Western Alley and his plan dedicates a right of way easement for the Town in order to allow the widening of Western Alley to meet Town road requirements. He believes similar easements have been granted by surrounding properties on Western Alley. Mr. Richardson noted this property is unique as it is the only property on Western Alley that cannot be developed as it lacks the frontage onto a road. If the variance is denied, it will cause a hardship as the property would be unbuildable. Mr. Richardson did not believe the granting of the variance would cause any adverse impact to surrounding properties. The only difference between Mr. Callahan's application and the present request is the building of a single family home instead of a two-family structure.

Mr. Milan inquired how soon the proposed project would begin. Mr. Richardson advised June or July.

Mr. Adolph asked if Mr. Richardson knew the access arrangements of parcels 1170, 1169, and 1159 and that this is not a Town maintained road. Are there any additional special easements or right of ways that need to be granted?

Mr. Mahoney believed in granting the variance there would not be a need for additional approvals to use Western Alley. The advantage is the Town would acquire the right of way easement on the frontage of this property. This would allow the Town Commissioners, if they chose to, to go forward with widening Western Alley and converting it into an actual Town road.

Mr. Keenan stated this is a Town alley and the right of way does not exist to convert it. The applicant is granting one section but the other sections are not likely to fall into place quickly, if ever. It is a public alley and the Town does and will continue to maintain Western Alley.

Mr. Syphard explained there are three properties including the subject property which access George Street or Thomas Street by way of Western Alley and have the right to do so because the alley is a public right of way.

Mr. Milan asked if there were any issues with the Fire Department access. Mr. Syphard noted to the extent that Western Alley is a one way street; the Department never expressed any concerns. There is approximately a 20' wide right of way with a 12' to 15' wide macadam surface.

Mr. Linder inquired about the rear setback requirement. Mr. Syphard stated in the R-2 there is a 35' setback requirement and the setback shown on the site plan is adequate. Mr. Adolph stated this site plan is more generous with respect to the building setback line in the front yard than is required.

Mr. Adolph asked if the 3' walk is a concern to the road improvement easement. Mr. Mahoney explained there is room on the site to modify the building location. The plan is presented to give the Board a picture only. We are asking approval of the variance to allow construction of a unit off Western Alley. Mr. Richardson pointed out the house site will be shifted back and be a Gemcraft Home.

Mr. Milan called for public comment.

Public Comment

Mr. Mark Carter, 321 Thomas Street, who lives directly across from this lot inquired about the dimensions of the house. Mr. Adolph noted it looks to be approximately 48" wide and includes the garage. Mr. Carter wanted to know more about the variance as his front porch is 10' from the edge of the alley and experiences water runoff problems. Mr. Syphard explained that from the edge of existing pavement the minimum setback for the proposed unit will be somewhere around 34', but the applicant has proposed going further back.

Mr. Carter expressed concern about the size of the house as other homes in the area are not large. He cannot envision enough room for a four bedroom home. Mr. Syphard advised if Western Alley were ever widened it would not go any further on Mr. Carter's side of the street but on the opposite side. This is highly unlikely, as everyone on that eastern side would have to grant the easement. Mr. Syphard stated any development on the subject lot will be subject to Stormwater Management Regulations and from a water standpoint there should not be any difference. He did explain the Town is working on day lighting the stream through Plumtree Park and it should help the drainage off your property. Mr. Carter asked when this is being purposed. Mr. Syphard advised if permits are received it could begin as early as January, 2012.

Mr. Carter asked if Mr. Richardson builds the house and is unable to sell, can it be rented for a business. Mr. Syphard advised this property can only be used for a single family dwelling.

Ms. Barbara Carter, 321 Thomas Street is concerned about the traffic. She claims people don't obey the street signs and use Western Alley as a two way road.

Ms. Fran Johnson, 124 Archer Street is concerned about the size of the house as neighboring homes are small. Her home is 120 years old and 14' wide with two bedrooms. Ms. Johnson is glad it is being developed but worries about the scale, size, drainage, and impact of the traffic.

Mr. Milan asked for any other comments. Hearing none, he closed the Public Hearing.

Mr. Milan called for comments from Board members.

Mr. Adolph asked for clarification on what the variance is permitting. Mr. Syphard stated the purpose of the variance is to allow the property to be developed. Mr. Keenan explained the variance will allow the piece of property to front on an alley rather than on a street.

Hearing no other comments, Mr. Milan called for a motion.

Mr. Linder moved and Mr. Adolph seconded the motion to grant the request of Mr. John S. Richardson for a variance of Section 9, Subsection 165-63.A(1) of the Town Development Regulations.

Mr. Milan asked if the motion is subject to the Planning Staff's recommendation.

Mr. Adolph wanted to know if this is the final venue for public comment with respect to the final development of this lot. Mr. Milan confirmed that is the case. Mr. Keenan explained staff has reviewed this to determine the setbacks and there is no variance as far as the placement of the house on a buildable lot. There is a variance to allow a house on a public alley rather than a street. In order to accommodate the concept of a public street, the Planning Commission did require an additional 30' be granted to the 20' right of way to make Western Alley a public street.

Mr. Linder amended his motion to include that the approval is based on findings of uniqueness and practical difficulty and that the Planning Commission's 30' easement requirement for roadway widening must be recorded prior to issuance of any building permit. Mr. Fry seconded the amended motion.

Mr. Milan called for any discussion.

Mr. Adolph stated his only concern is that this is the final forum to express concerns of the people attending, i.e. drainage issues and size of dwelling. Mr. Milan felt the Board is not in a position to deal with water management issues and the size of the structure is in compliance with the size of the lot. Mr. Adolph agreed. Mr. Fry noted the staff has already expressed that this building cannot be built without a stormwater management plan with remarks that said there will not be any more water running off this lot than what is currently running off it.

Mr. Keenan noted with the new Stormwater Management Regulations in place, the Department of Public Works has become familiar with the Town's responsibility to make sure the regulations are enforced.

Mr. Adolph asked the owner to candidly take some consideration of the comments brought out by the people this evening particularly relating to the surrounding community with respect to the type of dwelling proposed.

Mr. Milan called for the vote.

Ayes: Mr. Adolph, Mr. Fry, Mr. Linder, Chair Milan

Nays: None

The motion carried.

ADMINISTRATIVE MATTERS

Approval of Minutes

Chair Milan moved and Mr. Linder seconded the motion to approve the minutes of the October 26, 2010 meeting as submitted.

Ayes: Mr. Adolph, Mr. Linder, Chair Milan

Abstained: Mr. Fry

Nays: None

The motion carried.

Mr. Adolph moved and Mr. Linder seconded the motion to approve the minutes of the January 25, 2011 meeting as submitted.

Ayes: Mr. Adolph, Mr. Fry, Mr. Linder, Chair Milan

Nays: None

The motion carried.

Election of Officers

Mr. Adolph moved and Mr. Linder seconded the motion to elect Roy Milan as Chair and Clarence Fry as Vice Chair of the Board of Appeals.

Ayes: Mr. Adolph, Mr. Fry, Mr. Linder, Chair Milan

Nays: None

The motion carried.

The meeting adjourned at 8:05 p.m.

Roy Milan, Chair

June 26, 2012

The regular meeting of the Board of Appeals was called to order on Tuesday, June 26, 2012 at 7:30 p.m. at the Town Hall, 39 Hickory Avenue, Bel Air, Maryland.

MEMBERS PRESENT: Roy Milan, Chair
Gregory Adolph
Clarence Fry
Bruce Linder

IN ATTENDANCE: Robert Syphard, Department of Planning
Charles Keenan, Town Counsel
Joan Suitt, Recording Secretary

NEW BUSINESS

Public Hearing

Request of Kathleen A. Brown for Upper Chesapeake Medical Center for Variances pursuant to Section 165-106.B(3)b[3] of the Development Regulations to erect an additional identification/ directional sign on its campus located at 615 West MacPhail Road

Mr. Syphard reported the case this evening was advertised in the newspaper of general circulation and the property duly posted. This case is the request of Kathleen A. Brown for Upper Chesapeake Medical Center for variances pursuant to Section 165-106.B(3)b[3] of the Development Regulations to erect an additional identification/directional sign on its campus located at 615 West MacPhail Road. The Staff Report dated June 13, 2012 was prepared by the Planning Department during the ordinary course of business and is offered as evidence in this case. All abutting property owners have been notified.

Mr. Syphard explained the request before the Board is for two variances. The first is a setback variance from the 17.5 foot required setback from the right of way due in part to the property line created for the access point granted by State Highway off of Route 24. The sign is significantly farther back from the travel lane than 17.5 feet.

The second variance is for the additional entryway sign. There are provisions in the code to allow for multiple signs for shopping centers but nothing specific to a hospital campus. In 1998, the Board did grant a variance request for multiple freestanding signs to Upper Chesapeake recognizing the need for multiple entryway signs and other types of signs for emergency services for location purposes. It was never envisioned at that time that the campus would acquire access to Route 24, so the idea of another entryway sign at some future point was never addressed.

Mr. Syphard advised Mr. Leaf is here tonight representing Upper Chesapeake Medical Center.

Mr. Michael Leaf, 139 N. Main Street, is an attorney for Upper Chesapeake Medical Center in connection with the request for the two variances described by Mr. Syphard. They are to allow an additional entry sign to be located at the new entrance to the hospital campus from MD Route 24 and to allow the sign to be located very close to the right of way within the setback requirement.

Mr. Leaf called upon Robert Ridgeway who is a consultant with Interface Architectural Signage.

Mr. Ridgeway reported he has been tasked to design and fabricate the additional sign for the Route 24 entrance. The permitted location of the sign is not clearly visible on Route 24 heading south as it is around a significant turn.

Mr. Ridgeway distributed a rendering of the sign that will match the existing signs currently installed on campus. The finished dimensions of the sign are 15' tall and 120" wide. The sign complies with the dimensional requirements of the Developmental Requirements and Mr. Ridgeway shared photos taken from Route 24. Mr. Ridgeway felt the sign would not be visible to south bound motorists if located where the setback requirements allow.

Mr. Adolph asked if the north bound drivers would see the signage. Mr. Ridgeway stated the sign will be double sided. Mr. Adolph felt this could be confusing but Mr. Ridgeway advised all signs on campus are double sided.

Mr. Leaf then called upon Lou Schaffer who is a Senior Planning Manager with Frederick Ward and Associates.

Mr. Schaffer displayed the site plan to the Board and showed the proposed location of the sign. He felt it would be a dangerous situation to have the sign at the required setback. Mr. Schaffer noted the proposed location is a grassy area with no landscaping.

Mr. Milan inquired if there is a reason why the sign is being placed after the turn-in and not before. Mr. Schaffer felt it would give more visibility to people coming along the curvature and pointed out the area. Mr. Milan said if the sign was moved to the other side drivers would see it sooner. Mr. Schaffer agreed but noted people may not react soon enough to make that turn-in. Mr. Milan commented, typically route markers are before you get to the turn not after. He was concerned that since this is an emergency entrance, some people could go past it thinking the entrance is after the sign. Mr. Schaffer pointed out a 400' distance in the area where drivers can clearly see the paving and curb line changing direction. He felt if the sign was located on the opposite side drivers could miss the turn-in.

Mr. Schaffer then distributed five other photos to the Board members and explained each one. He further commented as the campus grew it was decided there needed to be another way in and out of the campus for safety reasons, i.e. fire and ambulance. Mr. Schaffer advised the campus is approximately sixty acres and in many ways would be comparable to a shopping center with multiple entrances.

Mr. Leaf asked Mr. Schaffer if the variances were denied would Upper Chesapeake and the public suffer. Mr. Schaffer said there is a real potential for that and stated the identification sign will be visible and beneficial to the campus as well as safety to pedestrians. Mr. Schaffer noted the sign will not have any impact on adjoining properties nor obstruct the view of motorist and pedestrians. He noted the State Highway Administration was sent the plan and have no objection to the location of the sign.

Mr. Milan continued to be concerned that people will think the turn is after the sign and the possibility of having to replace the sign if motorist traveling at excessive speeds could not make the turn. For the record, Mr. Milan stated there should be a sign there but would like to see the sign on the other side of the intersection then where it is proposed.

Mr. Leaf called upon Gene Currotto, Vice President of Operations at Upper Chesapeake.

Mr. Currotto stated this is not a full intersection as it is a right-in/right-out only. We want the sign to be visible for people coming south on Route 24 and have every opportunity to see it as soon as they can to decelerate and make a safe right turn. For those exiting the campus, we would like the sign on the right hand side of the exit as you don't want a 15' sign on the left when moving into traffic going 55 miles per hour. He appreciates Mr. Milan's comments and the support the Board has given to Upper Chesapeake.

Mr. Leaf feels the testimony justifies granting the variances to allow an additional sign at this location and to allow the sign be located within the setback. He asked the Board to approve what has been requested.

Mr. Adolph inquired about the amount of square feet of the campus. Mr. Schaffer stated it is over 300,000 square feet and with the Cancer Center will be 400,000.

Mr. Syphard reported this access point was created because the Town agreed to create a public roadway within the hospital campus and it will be public access.

As there were no other comments, Mr. Milan closed the Public Hearing. He called for a motion.

Mr. Fry moved and Mr. Gregory seconded the motion that the request of Upper Chesapeake Medical Center for variances pursuant to Section 165-106.B(3)b[3] of the Development Regulations be approved based on the staff report and the testimony presented at the hearing. The Board found that the subject property is unique in that it is the only hospital campus in the Town and the only property to have direct access to Route 24. Approval was granted to the property owner to erect freestanding signs at the other two public right-of-way ingress/egress locations on the campus in 1998, and the request is consistent with that approval. Further, the Board found that due to the geometry of the Route 24 roadway, the proposed reduction from the required 17.5 foot setback will provide better sign visibility for motorists entering the site. There was no one present objecting to the requests.

Ayes: Mr. Adolph, Mr. Fry, Mr. Linder, and Mr. Milan

Nays: None

The motion carried.

ADMINISTRATIVE MATTERS

Election of Officers

Mr. Fry moved and Mr. Adolph seconded the motion to elect Roy Milan as Chair of the Board of Appeals.

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Ayes: Mr. Adolph, Mr. Fry, and Mr. Linder

Nays: None

The motion carried.

Mr. Milan moved and Mr. Linder seconded the motion to elect Clarence Fry as Vice Chair of the Board of Appeals.

Ayes: Mr. Adolph, Mr. Linder, and Mr. Milan

Nays: None

The motion carried.

Approval of Minutes

Mr. Adolph moved and Mr. Fry seconded the motion to approve the minutes of the May 24, 2011 meeting as submitted.

Ayes: Mr. Adolph, Mr. Fry, Mr. Linder, and Mr. Milan

Nays: None

The motion carried.

NEW BUSINESS

Ethics Presentation

Ms. Joyce Oliver, Director of Administration advised the State Board of Ethics requires the Town to train all Boards and Commissions on changes of the Public Ethics Law. After the power point training, Ms. Oliver asked for any questions or concerns.

Mr. Milan stated we are going to find it very difficult to have anything come before a committee of people who have agreed to serve on a board that doesn't have knowledge or some involvement somewhere. He thought the law is vague enough that if somebody wants to go on a witch hunt it could tie up any commission or board in the Town.

Discussion continued regarding dinners, vacations, and gifts.

Mr. Milan explained he likes being a volunteer member of the board and that he is contributing back to the community.

Mr. Syphard stated this is being formalized specific to the reception of gifts.

Mr. Keenan reported this has been in effect for a long time and the State has now tightened the form provision that applies primarily to candidates and Commissioners and not to Board members. There is a substantial disclosure required of candidates running for elected office and the persons occupying elected office.

Mr. Milan felt it will make it more difficult to get people to run. He knows the law is the law but feels somebody needs to push back. Mr. Milan said he will be pushing back.

Ms. Oliver remarked a lot of the counties and municipalities understand we need our volunteers.

Mr. Adolph felt we are going to get to that critical point for volunteers and elected officials. Mr. Keenan advised the elected side is where it will hit because that is where the disclosure lays.

Mr. Milan stated the conflict of interest, the vagueness of when it happens, and whether you have to disclose it or not creates an exposure that does not make him comfortable.

Ms. Oliver explained she will be taking feedback from all the committees to the Board of Ethics.

Mr. Milan thanked Ms. Oliver for her presentation.

The meeting was adjourned at 8:50 p.m.

Roy Milan, Chair