

Prince George's County Council

Agenda Item Summary

Meeting Date: 11/30/2004
Reference No.: CB-090-2004
Draft No.: 2
Proposer(s): Knotts
Sponsor(s): Knotts
Item Title: An Ordinance permitting elderly housing in the R-E Zone under certain circumstances

Drafter: Jackie Brown, Director PZED Committee
Resource Personnel: Betty Horton Hodge, Legislative Aide

LEGISLATIVE HISTORY:

Date Presented: 9/28/2004
Committee Referral: 9/28/2004 - PZED
Committee Action: 10/26/2004 - FAV
Date Introduced: 11/1/2004
Public Hearing: 11/30/2004 - 10:00 AM
Council Action (1): 11/30/2004 - ENACTED
Council Votes: MB:A, WC:A, SHD:A, TD:A, CE:-, DCH:A, TH:-, TK:A, DP:A
Pass/Fail: P
Remarks:

Executive Action:
Effective Date: 1/17/2005

AFFECTED CODE SECTIONS:

27-352.02, 27-441

COMMITTEE REPORTS:

PLANNING, ZONING & ECONOMIC DEVELOPMENT COMMITTEE

Date 10/26/2004

Committee Vote: Favorable, with amendments, 4-0 (In favor: Council Members Dernoga, Bland, Exum, and Harrington)

Staff informed the committee that CB-90-2004 was previously scheduled for committee discussion on October 12, 2004; however, the bill's sponsor requested that the bill be held to allow time for staff to prepare amendments to address the written referral comments that were received.

CB-90-2004 permits one-family detached dwellings for the elderly by special exception in the R-E Zone. The present Zoning Ordinance permits one-family attached dwellings for the elderly by special exception in the R-R Zone, but detached elderly dwellings are not permitted in any residential zone. The bill's sponsor informed the committee that revisions to the bill address previous comments and he requested the Council's support for the legislation and the proposed elderly housing development.

Staff presented a Proposed Draft-2 of CB-90-2004 to address several comments as follows. The Legislative Officer provided a memorandum to the committee director detailing several concerns. The proposed amendments to the

Zoning Ordinance to allow attached dwellings in the R-E Zone as a special exception use are inconsistent with the uses and other development criteria applicable in the R-E Zone. This particular kind of use is more appropriately considered in the context of a zoning change (to actually apply to change the zone to the R-55 Zone), or to await revisions within a comprehensive zoning map amendment.

Most problematic is that the use ("elderly housing") is not defined anywhere in the Zoning Ordinance. Unless a definition is provided for the "elderly housing" use that is in compliance with the anti-discrimination provisions of the Federal Fair Housing Act, the Legislative Officer recommended that the proposed text amendment not be adopted by the Council.

The delegations of building restrictions in subsection 27-352.02(5) without criteria is not legally sufficient. The Council must either provide specific criteria, incorporate other appropriate criteria by reference, or use the existing criteria for the R-E Zone.

The Office of Law provided the following comments in its memorandum dated October 8, 2004 to the Council Administrator:

1. Unless the detached elderly housing will be built on large lots with substantial open space, then it will not be in accordance with the stated purposes of the R-E Zone as described in the Zoning Ordinance, Sec. 27-427. This is particularly significant since CB-90 proposes the use of density standards for the R-55 Zone, which permits higher density residential development.
2. Subsection 27-352.02(3) is written as if the District Council is required to make a finding instead of the finding being one of the conditions that would permit the single-family elderly dwelling units. Also, despite this language's similarity to Sec. 27-352.01 (elderly housing in the R-R Zone), there should be clear, specific reasons for the District Council's findings as a matter of self-protection. Therefore, the Office of Law recommended that subsection (3) be revised to read: "The District Council's detailed finding that the subject property is suitable for the type of development proposed and is of sufficient size to properly accommodate the proposed number of dwelling units."
3. Additionally, there are some minor technical changes needed, such as revising "shall not" to read "may not" throughout the bill. Also, there may not be a need for a new section, since the new language is nearly identical to Sec. 27-352.01 and can be added as a subsection to that existing section.

The Principal Counsel provided a memorandum dated October 8, 2004 to the committee director with the following comments for the committee's consideration:

1. The reference in (a)(3) to minimum R-55 density would be better stated as a specific number. Maximum R-55 density is about 6.7 units per acre (43,560 divided by 6,500), and it seems preferable to give a whole number, like 5, 6, or 7.
2. As to density, the committee should consider whether it is appropriate in the R-E Zone, where density is limited to one dwelling unit per acre, to allow six or seven units per acre merely because the units will be occupied by elderly families. For most purposes, a single-family dwelling has the same effects on surrounding properties, as to traffic and access and landscaping and architecture and general design and use, whether or not it is occupied by a family with an elderly member. The presence or absence of elderly persons may have some influence on the number of vehicles per household and the number of peak hour trips generated by the development, but in many cases the difference will not be substantial. It depends in part on how elderly the family has to be.
3. As to that, the definition of "elderly," footnote 58 in the present use table in § 27-441 (b) provides that a dwelling for the elderly is one "operated in accordance with State and Federal Fair Housing laws." The Legislative Officer advises that under the Fair Housing Act Amendments a family is considered elderly if one member is over the age of 65, 62, or 55, depending on project amenities. Again, such families may or may not have persons with regular jobs and more than one vehicle.

Footnote 58 should be amended to say that the "Fair Housing laws" are those applicable to elderly families. Many facilities operated in accordance with State and Federal Fair Housing laws have no elderly families.

4. The following changes to the bill's language, where it follows the present Sec. 27-352.01, are also recommended.

Since all the numbered paragraphs in subsection (a) are complete sentences (and not fragments, as usually seen), it seems preferable to have periods at the end of each paragraph instead of semicolons. No semicolons are used in paragraph 7, which has several subparagraphs. Also, since there's no subsection (b), there shouldn't be a separate (a).

5. The standards in (a) (3) are vague and not well-stated. It would be better to articulate how a property may or may not be found "suitable" and how it is determined whether the property is of "sufficient size to properly accommodate the proposed number of dwelling units." A reviewing court (or readers generally) would not know how to apply these standards.

6. The recreational facilities standards in (a) (4) would also be improved by giving more specific standards, perhaps with reference to adopted Parks and Recreation Department standards or something generally accepted in the recreation field.

7. It is suggested that the wording of (a) (7) (C) be revised as follows:

(C) If a community center is proposed, it shall have at least three physically separate areas, including at least one separate room. The separate areas shall provide space for recreational and social activities at different intensity levels.

8. The open space requirement in (a) (7) (B) has been reduced from 10 % in Sec. 27-352.01 for the R-R Zone to 5 % for R-E property. Since this new elderly housing use is proposed for the R-E Zone, intended to have just one unit per acre, one would think that more open space should be required, not less. R-E and other low-density residential zones are supposed to provide more open space than the zones allowing higher residential densities.

The Planning Board supports CB-90-2004 with amendments and offered the following comments for the committee's review. While the Planning Board generally supports the concept of CB-90, there are several portions of the bill that may need to be revised to ensure that the property is used in the manner intended. The Special Exception process can be used to ensure that elderly housing is compatible with properties in the neighborhood and not undermine purposes of the R-E Zone.

There is no definition of elderly in this bill. This needs to be clarified. In addition, while the intent of the bill is to provide housing for elderly families, it has been the Planning staff's experience that enforcing these requirements is difficult.

Because the lots may be very small and the location and form of the houses will not be known until the review of the Special Exception site plan, the Council may wish to add language to the bill that requires that appearance and quality issues be addressed during the Special Exception process. The Council may also want to consider requiring that a homeowners association be established to maintain the recreation and open space areas.

The Office of Audits and Investigations determined there should be no negative fiscal impact on the County as a result of enacting CB-90-2004.

Proposed Draft-2 (DR-2) addresses the above comments with amendments that: limit applicability of CB-90 to certain properties in the R-E Zone to those with a maximum of six acres located in the Developing Tier, clarify density of a maximum of six dwelling units per acre; require development standards in accordance with the R-55 Zone; provide a definition of elderly housing for purposes of the subject R-E development in accordance with the Federal Fair Housing Act; provide additional criteria for review of appearance and quality issues at the time of Special Exception, increase the open space requirement; require that the recreation facilities are in accordance with

specific standards; and provide further clarity in certain language as well as improve format.

Council Member Bland expressed concern regarding the impact of the bill on R-E properties throughout the County. Chairman Dernoga commented that even though the bill limits applicability to R-E properties that are a maximum of six acres, it does not preclude subdivision of larger R-E properties to meet this acreage limitation.

Chairman Dernoga commented that there has been an increasing number of senior housing projects with multiple density increases and these properties should be given consideration as sending areas in the Transfer of Development Rights (TDR) program that is being developed for the County. The Chairman requested that the legislative history reflect that the property in question may be considered as part of the TDR transition.

Vernell Arrington of Arrington, Camp & Watson, LLC. was present to respond questions.

Council Member Bland made a motion to further amend the legislation to limit its applicability to those R-E properties that are a maximum of six acres on the date of the bill's adoption. The motion passed 4-0.

In addition to the amendments in Proposed DR-2, on page 2, line 8, the words "as of November 30, 2004" were added after "Developing Tier."

BACKGROUND INFORMATION/FISCAL IMPACT:

(Includes reason for proposal, as well as any unique statutory requirements)

The Zoning Ordinance allows elderly housing (one-family attached dwellings) in the R-R Zone by Special Exception. This legislation allows elderly housing (one-family detached dwellings) in the R-E Zone by Special Exception subject to certain requirements.

CODE INDEX TOPICS:

INCLUSION FILES:
