

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed A-6696-07, Heathermore, requesting an amendment of the Official Plan for Marlton R-P-C to allow townhouses on Parcel 104 as a change in use in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on May 8, 2014, the Prince George's County Planning Board finds:

BACKGROUND

The subject property is an undeveloped 12.26-acre deed parcel (Parcel 104) in West Marlton. The Official Plan for Marlton was approved as Zoning Map Amendment A-6696-C in 1969. At that time, the entire Marlton property was placed in the Residential Planned Community (R-P-C) Zone. The Zoning Ordinance in effect at that time allowed a maximum of eight dwelling units per acre for the entire R-P-C tract. With 1,157 residential acres and a maximum density of eight units per acre, the Zoning Ordinance permitted a maximum of 9,256 dwelling units in Marlton. That figure was ultimately limited to 6,192 by approval of the Official Plan.

The Official Plan was amended in 1990 (A-9730-C and A-9731-C). A-9730-C included 431.5 acres of land located in what is now referred to as East Marlton. East Marlton is located along the Penn-Central Railroad line, between Croom Road and Duley Station Road to the east. The second amendment, A-9731-C, was for approximately 1.86 acres of land in West Marlton. Overall, these amendments allowed 200 additional units in Marlton, which increased the total allowable number of dwelling units to 6,392 (4,213 in West Marlton, 2,179 in East Marlton). The latest figures developed by staff indicate that the number of approved dwellings (whether in the form of actually constructed units or as approved building lots) in West Marlton is 3,371. This leaves a remaining capacity in West Marlton of 842 dwellings.

In 1985, the Board of Education conveyed Parcel 104 to Prince George's County by deed recorded in Liber 6208, folio 775. The County Council of Prince George's County surplused the property in 2009 through County Council Resolution, CR-70-2009. The site was rezoned to the R-30 Zone through the 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment* which was adopted by the District Council on September 15, 2009. The most recent Official Plan Amendment for Marlton was also approved through the 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment*. The site was conveyed to the applicant in 2011. On November 17, 2011, the Planning Board approved Preliminary Plan of Subdivision Application 4-11003 for 92 townhouse lots and four parcels on the property. The subdivision has not yet been recorded.

1. **Proposed Amendment:**

The Official Plan includes a Detailed Development Plan which identifies specific uses for specific parcels. Where the Detailed Development Plan identifies such specific uses, other uses are not

deemed to be in conformance with the Official Plan and are not permitted. The Detailed Development Plan, approved in 1969, designated the subject property for development as a public school. With this application, the applicant proposes to replace the school designation with up to 92 townhouses. This would be in concert with the District Council's actions in selling the property to a private developer and rezoning it to the R-30 Zone. Townhouses generally are a special exception use in the R-30 Zone, however Section 27-539(c) states:

(c) R-P-C Zone.

- (1) No use shall be allowed in the R-P-C Zone except those uses allowed in (and in the locations of) the zoning subcategories shown on the Official Plan.**
- (2) Specific uses (in addition to zoning subcategories) may be shown on the Official Plan. If a use shown normally requires the grant of a Special Exception, a separate Special Exception shall not be required. If a use normally requiring the grant of a Special Exception is not shown, a separate Special Exception must be obtained. If the Special Exception is granted, it shall automatically be considered an amendment of the Official Plan.**

In accordance with (1) above the applicant is requesting an amendment to the Official Plan to locate townhouses on the subject property. Because the applicant has chosen to proceed with an amendment to the Official Plan to locate the townhouses on the subject property, a detailed site plan is required pursuant to Section 27-538(d) of the Zoning Ordinance:

A Detailed Site Plan shall be approved in accordance with Part 3, Division 9, of this Subtitle prior to the issuance of any grading, building, or use and occupancy permit for any property in an R-P-C Zone approved, as provided in Section 27-158(a), by Sectional Map Amendment or Zoning Map Amendment after January 1, 1989. No grading, building, or use and occupancy permit shall be issued except in accordance with the approved Detailed Site Plan.

2. Evaluation Criteria:

Section 27-158(b) of the Prince George's County Zoning Ordinance allows the Planning Board to amend the Marlton Official Plan under certain circumstances. Most of the criteria are procedural in nature. In pertinent part Section 27-158(b)(1)(C) allows amendments that do not involve:

The proposed amended Official Plan shall not increase the density approved by the Official Plan and must be found compatible with the surrounding property including existing land in the R-P-C Zone.

The test for Planning Board approval of an amendment to the Official Plan for Marlton is two-pronged. There must be no increase in density and the proposed change must be compatible with

the surrounding land use types. There is no change being proposed to the zoning subcategory shown on the Official Plan.

3. **Density:**

The applicant's proposal to modify the Official Plan for Marlton to include townhouses on the subject parcel rather than a school does not increase the density for West Marlton. The Official Plan of Marlton includes a mix of dwelling types and a cap of dwellings within each subzone. The capacities in each subzone were established at the time of the original approval in 1969 (A-6696-C), and revised in 1990 (A-9730-C and A-9731-C). The District Council, in adopting the 2009 *Approved Subregion 6 Master Plan and Sectional Map Amendment*, rezoned the site to the R-30 Zone. The subject property was part of that rezoning. Since there was no R-30 Zone in Marlton in 1969, no dwelling unit cap was assigned to the R-30 Zone.

The approved density cap for West Marlton of 4,213 dwelling units still applies. The latest figures developed by staff indicate that the number of approved dwellings (whether in the form of actually constructed units or as approved building lots) in West Marlton is 3,371. This leaves a remaining capacity in West Marlton of 842 dwellings. The proposed 92 units fall well within this density cap.

4. **Compatibility:**

The Planning Board must also find that the proposed change is compatible with surrounding land uses. In fact, the Planning Board has already come to that conclusion in their approval of Preliminary Plan of Subdivision application 4-11003. Existing development on the properties to the north and west are also townhouses. Across Heathermore Boulevard to the south is an approved, but as yet unbuilt, 172-unit apartment complex for seniors (DSP-02037-01 Eagle Crest at Marlton). To the east is the Potomac Electric Power Company (PEPCO) right-of-way which bisects Marlton. Development of the surrounding townhouses occurred under standards that were in effect in 1969, even though the development took place much later. Two Council Bills in 1996 amended the Zoning Ordinance regarding townhouse development. County Council Bill CB-55-1996 established certain design standards and special exception criteria for townhouse development, and it reduced the maximum density for townhouses in the R-T Zone from eight to six dwelling units per acre. County Council Bill CB-56-1996 established design criteria and density requirements for townhouses in Comprehensive Design and Mixed-Use Zones. County Council Bill CB-55-1996 also amended the R-30 Zone to allow townhouses by special exception only. Neither CB-55-1996 nor CB-56-1996 included mention of the R-P-C Zone, so, in theory, these standards do not apply to the subject property, thus, the right to develop at the pre-1996 standards could be argued. However, this is a new proposal to amend the Official Plan. The Planning Board has the authority to attach conditions to its approval, including the imposition of more current design standards for townhouses and limiting their density to the maximum eight dwellings per acre imposed by the R-P-C Zone. The Planning Board believes this is the appropriate course of action and is consistent with the Planning Board's decision in approving 92 lots on 12.26 acres in Preliminary Plan of Subdivision 4-11003.

Therefore, while the Planning Board recommends approval of the Official Plan amendment to allow townhouses, the recommendation is for *up to* 92 lots, and the applicant should be aware that compatibility issues and the requirements of the Zoning Ordinance will be scrutinized at the time of detailed site plan review. Ultimately, the number of lots may be reduced. This approval should be construed simply as a change in the permitted dwelling unit type in accordance with the provisions of the Code.

5. **Financial Participation in the Extension of Heathermore Boulevard and Marlton Recreation Facilities:**

At the time of the preliminary plan approval for this site, the issue of the applicant's participation in both the extension of Heathermore Boulevard and the overall recreational facilities for Marlton was addressed, but not decided upon because the Planning Board felt it was not appropriate at that time. It was decided that these issues would be further addressed at the time of the Official Plan Amendment.

Lake Marlton Limited Partnership (LMLP) has prepared and submitted plans for the construction of the Heathermore Boulevard Extension, which provides frontage and sole access to the subject property. The recreation facilities established by the Official Plan Amendment for Marlton will be built on existing or future Department of Parks and Recreation (DPR) property and be open to all residents of Marlton and the public. The Official Plan does not establish a financial structure for the construction of the roadway extension or public and private recreation facilities. However, since the subject property is in the Marlton R-P-C Zone and is using the density established by the Official Plan, the applicant agrees it is appropriate to establish a mutual financial agreement with LMLP for their construction.

The applicant and LMLP have recorded an agreement to that effect in the Land Records of Prince George's County at Liber 33952, folio 093. The Planning Board has reviewed and evaluated the document and agrees that it adequately addresses the applicant's financial responsibilities.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the above-noted application, subject to the following conditions:

1. The maximum number of dwelling units shall be 92 townhouses. This may be reduced at the time of Detailed Site Plan approval after a further analysis of compatibility, including townhouse design issues contained in the Zoning Ordinance.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, Shoaff and Bailey voting in favor of the motion, and with Commissioner Hewlett temporarily absent at its regular meeting held on Thursday, May 8, 2014, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 5th day of June 2014.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

PCB:JJ:TL:arj