

Maryland Board of Zoning Appeals December 18, 2018

Chairman Phiefer called the meeting to order at 7:30 p.m. Those in attendance were Board Members Baker and Wells, Community Development Coordinator Hardin, Town Attorney Robert Benson and Clerk of Council Fisher. Guest: Michael Sullivan, Brock Parker, Alan Wilber and Joel Gallihue

Called to Order

Board Member Phiefer called the meeting to order and asked for anyone who would be giving testimony at this hearing to sign in and to stand and be sworn in. Board Member Phiefer administered the Oath.

Town Attorney Benson stated that the only matter on the agenda is a request for special exception filed by the Maszera Corporation for property known as 29690 Foskey Lane, Map 20, Parcel 14, located within the Town of Delmar, Maryland. The property is currently zoned residential R-2. The applicant has presented a plan to put townhouses/apartments on this property which is permitted by Special Exception. Tonight this hearing is for that Special Exception request.

Town Attorney Benson informed the Board that the property has been approved for a subdivision. There is an approved existing subdivision on this property. The new plan presented this evening is their preferred development plan. If the Board does not approve the applicant's request then they can go back and develop the original plan. He wanted the Board to understand that approving the new project or not, there can be apartments/townhouses on the property either with the already approved plan or the new proposed plan being presented this evening.

Board Member Baker asked if the Board approves this Special Exception request tonight, does it override the previous plan. Town Attorney Benson stated that if the applicant gets approved for the Special Exception this evening, his new development plan will be approved and that new development plan will then be recorded.

Michael Sullivan introduced himself as representing the applicant and being the attorney for Maszera Corp. The property is 46.92 acres, identified as Map 20, Grid 4, Parcel 14 located in an R-2 zoning district in Delmar, MD. Parcel 14 is currently approved for a subdivision which consists of single family residential homes and townhouses. The current plan calls for 248 units. The concept plan for the project formerly known as Pheasant Lake was revised to comply with Maryland Storm Water Management regulations. Eleven months ago, it received final approval. The Maszera Corp. has continued to pay real estate taxes on the subdivided parcels.

Last year, after the economy improved, the developer could not continue to pay taxes without doing something to improve the parcels. Upon receiving approval for the revised concept plan; the most economically feasible project for the Maszera Corp. was an apartment complex to replace the townhouse and single family residential home project.

Mr. Sullivan stated that Mr. Joel Gallihue did a study on the impact on public services, utilities, traffic patterns and the public school system. The study shows that the impact is much less than the townhouse and single family homes project originally proposed. After working with Town Officials, he brought on Mr. Gallihue to do an impact report and after it was prepared it was presented to the Mayor and Commissioners in September of 2018. The concept plan proposed; Station Crossing Commons, received favorable recommendation from the Mayor and Commissioners. They received that favorable recommendation because they demonstrated to the satisfaction of the Mayor and Commissioners that the impact from the new proposed plan would result in less of an impact than the Pheasant Lake development. From there, they submitted application for concept plan approval, which is required, according to Section 31 A of the Delmar Zoning Code, for a Special Exception. They first had to seek a favorable recommendation from the Planning and Zoning Commission. The concept plan and the request for recommendation for a Special Exception were given a favorable recommendation with one person abstaining.

Mr. Sullivan said that Section 5B2 of the Delmar Zoning Code permits apartment complexes to be developed in an R-2 residential district subject to a Special Exception. He is asking for that Special Exception in Parcel 14 which is 46.92 acres. The actual area on which the apartment complex will be developed is much smaller than the original Pheasant Lake plans. There will be no public/private partnerships involved. The apartments will be brought to market at the price the market will bear. The complex consists of 10 units; 9 are 3 story and will have 24 units each and the 10th will be a marquee walk-up that will have 32 units. The entrance will be off of Maryland Avenue and will have a clubhouse and a pool. He stated that the developer thinks this will give an advantage when it hits the market. There is already a vegetation buffer in place. Everything will be completed when the formal site plan is submitted to the Planning Commission.

Mr. Sullivan submitted his letter to the Town of Delmar, dated November 21, 2018 as Exhibit A along with 4 other exhibits for Station Crossing Commons. Exhibit 4 is a report produced by Joel Gallihue which studies the difference in impact between the Pheasant Lake Subdivision and the Station Crossing Commons Subdivision.

Mr. Sullivan stated that the concept plan presented this evening is the same concept plan presented at the October, 2018 Planning and Zoning Commission meeting where it received a favorable recommendation.

Mr. Sullivan said that the reason for tonight's hearing is to request a Special Exception. If the developer meets certain standards that are set in the Town's Zoning Code in Section 31-2-C. The first standard is "The proposed use does not adversely affect the General Plan for physical development of the district, or portion thereof, adopted by the Commission" On the last page of the report provided by Mr. Gallihue, indicates that the Town adopted a Comprehensive Plan. This proposed plan complies completely, with more walkable and livable community and fits the mold of what the Town intended when it adopted its' original Comprehensive Plan.

The second standard is that the “proposed plan will not adversely affect the health, safety and general welfare of the residents or workers in the area and will not be detrimental to the use or development of adjacent properties or the general neighborhood.” Mr. Sullivan said the adverse effect if any, produced by this development plan, are significantly minimized in comparison to the Pheasant Lakes Development. There is a reduction in student population and on public utilities. Under this plan, if apartments are developed under the Town’s Code, the public utilities are served by a private pump station and are maintained by the developer. If it were the Pheasant Lake project, the utility lines would run under the streets and subject to the utility easement or the Public Works Agreement. The Town would maintain the responsibility of maintaining the utilities along with the streets which also means the Town would be responsible for the removal of snow. The developers of the proposed apartment complex will be charged with the maintaining of the streets and the snow plowing.

Mr. Sullivan said that he does recognize the Town’s concern of their school system. It is the Pride of Delmar. This proposed project reduces the student impact significantly as shown in Mr. Gallihue’s report.

The 3rd and 4th standards do not apply.

The proposed project complies with the Towns’ standards in regards to developing an apartment complex. He is asking the Board to approve the Special Exception for parcel 14 owned by the Maszera Corp. permitting it to build an apartment complex as permitted by Special Exception under Section 5B2 of the Town’s code.

Town Attorney Benson asked Chairwoman Phieffer to accept the November 21st letter as Petitioners Exhibit A in evidence as presented to the Clerk of Council.

Town Attorney Benson said that the original design had to have storm water management changes. In 2015 the State of Maryland changed its’ requirements so what had be okayed was no longer okay. That has nothing to do with this hearing tonight but just for everyone’s understanding.

He suggested at the conclusion of the hearing tonight, regardless of how they chose to vote, that the Board take a preliminary vote and a written Findings of Facts will be prepared and we come back in January and adopt the Finding of Facts for the written record based on the preliminary vote. The reason is to establish a written record, regardless of the outcome.

Mr. Joel Gallihue introduced himself as a Certified Planner hired by the Maszera Corp. He stated he was sworn in at the beginning of the hearing. He stated that he produced Exhibit A on behalf of the petitioner. The report evaluates the impact on the Town of the new Station Crossing Commons verses the formally Pheasant Lake project. The findings of the report compare the impacts of the Pheasant Lake subdivision with the impact of the Station Crossing Commons subdivision.

Mr. Gallihue stated that presently the approved mixture of townhouses and single family detached homes verses a development of 3 story apartment buildings. The impacts are shown on public facilities, traffic and the projections on the student enrollment. The report begins with the traffic impact and uses studies around the country to access different types of uses. He applied the standards in looking at peak hour trips between the Pheasant Lake subdivision and Station Crossing Commons. Looking at the Pheasant Lake AM peak trips verses the Station Crossing Commons AM peak trips. This is one section in the argument that the proposed development would reduce the impact on the roads and traffic. Pheasant Lake shows 180 as the peak AM trips and Station Crossing Commons shows 114 AM peak trips. In the PM peak trips, Pheasant Lake shows 215 and Station Crossing Commons shows 144 peak PM trips. Mr. Gallihue said that in a single family development, the roads must be on public streets. It is an impact on capital planning and capital budgets. Apartment complexes do not have that requirement which will reduce the impact to the Town's budget.

In reference to the schools, Mr. Gallihue said that there is a long period of time that the State will support additional projects or renovating the elementary school. A lot of what happens when improving on an existing school or a replacement is proceeded by prior projects.

Mr. Gallihue said he used an estimated enrollment method and chose existing circumstances of how many students were generated by different types of residential units. He chose some areas that have the same comparability to Delmar. He said Scenario 1 could be set aside since it is the original approval and no longer is relevant.

Scenario 2 – Storm water Management Regulations took away some of the development potential. The impact is based upon the ratio of students generated by different housing types. The proposed project are walk-up 3-story apartment buildings. Scenario 2 has no apartments in it. He took into account the alternative grade structure where the 5th graders go into the middle school in order to take advantage of the space.

Scenario 3- talks about the number of students. In the more suburban areas, generates students quicker. The proposed plan reduces the impact on schools by one-third.

The public water and waste water section summarizes how the smaller floor area of units and the unified operations of water, such as lawn maintenance reduces the impact of water and sewer.

In Maryland a Comprehensive Plan is required by law on a 10 year cycle. Back in the 1920's zoning is allowed as long as it complies with the master plan. Whenever a planning department evaluates the comprehensive zoning, they need to be careful with the planning process. A Special Exception is put in for a reason. It is a specific process. Special Exceptions are anticipated when the zone was mapped out as long as the conditions have been met. The use usually survives through the Supreme Court.

When asked by Mr. Sullivan, Mr. Gallihue described the difference of impacts of Pheasant Lake and Station Crossing Commons. It basically takes the original proposal and reduces them in a number of evaluations. In the master plan it directed development to enlist subdivisions. In 2008, everything changed. It directed the growth to areas that had already been subdivided. It was Smart Growth for Maryland, trying to take advantage of the existing infrastructure. It follows the growth pattern with the least amount of impact on the community resources.

Chairman Phieffer asked how much land was allowed for the Pheasant Lake project. Mr. Gallihue answered that it took up the whole site. They have not proposed units for the areas not being discussed this evening. Chairman Phieffer stated if the stats and numbers given this evening is based on just on this specific area now with the proposed apartments, he could come back and build on the other side and then it would be twice the impact.

Board Member Wells asked about the future plans for the other half of the property. Mr. Sullivan said that this analysis is for the whole site. Something else would have to come forward and go through the entire process to get any approvals. The Special Exception is only for what is being presented this evening. The request for Special Exception is for this specific parcel. There are not development plans for the remaining lands, due to costs. The costs and resources and everything that went into addressing just this section, he doesn't anticipate at any point in the near future that they will be back discussing development of the remaining property.

Board Member Wells stated that his concern is with the 248 apartments. The developer could come back and ask for another Special Exception. Mr. Sullivan said that the Special Exception is only for the area discussed tonight. He said that the Town reached out to him to ensure that the Public Hearing notice for tonight's hearing actually only identified the property as shown on the concept plan and did not identify the parcel as a whole.

Board Member Wells asked if the other parcel could be subdivided. Town Attorney Benson read from page 119 of the Delmar Zoning Code that states if the Board grants this Special Exception then they can set conditions that the other parcels cannot be developed on or not developed for a certain period of time. There would have to be a written agreement.

Mr. Sullivan said that the remaining parcel is located within the R-2 zoning district. He is not asking for anything for the remaining parcels. There are no plans for development for the other lands. He just wants to build on the lands that are already subdivided. This land has been subdivided for over 10 years.

Chairman Phieffer said that Pheasant Lake took up the whole land mass. The Board's concern is that with the left-over land, they could come back in 5 years and double all of this on the remaining parcels of land.

Mr. Gallihue said that the new site plan does not allow units on the other lands until they come forward and go through the whole process again for that land. Right now the other plans are no longer pre-approved for townhouses or apartments. Mr. Sullivan said that he has no idea where the developer will be in 5 years. Any future development plans he has, Mr. Sullivan has no idea. It is nothing he needed to know since it doesn't involve this hearing tonight. He said that if they are unable to go with the proposed Station Crossing Commons, then they would move forward with the Pheasant Lake subdivision. The developer has to make use of this property.

Chairman Phieffer said that the use of the Water Treatment Plant impact on all of that and the impact is less because the units are smaller and minimal compared to Pheasant Lake. Mr. Gallihue said that the units are small with 1 EDU per dwelling. The units are smaller with less bathrooms and with smaller kitchens.

Mr. Brock Parker from Parker and Associates was called to speak and he identified himself and said that he was sworn in at the beginning of the meeting. He stated that he is the project engineer. Mr. Parker said that he is familiar with Exhibit A which is the concept plan prepared for Station Crossing Commons. He said that he did both the plans for Pheasant Lake and this new proposed plan along with bringing it up to code as far as the storm water management plan.

Mr. Parker said that this hearing tonight is for this specific project and not for a Special Exception to allow them to build as many apartments as they want on the entire property. Town Attorney Benson agreed and said that any significant changes to this site plan, they would have to come back through the entire process all over again. Mr. Parker said that the entire presentation this evening is based on this new plan verses the Pheasant Lake project. If they come back with a second plan, it would be a totally different agreement and less supportable arguments. They would be asking to bring in additional apartments which would have different impacts on the Town. He said they are swapping out the single family units to apartment units, which will have a significantly less impact to the Town. From the engineering side, there will be privately maintained roads, private trash collection. The water and sewer mains will all be maintained by the developer. Pheasant Lake is already a recorded subdivision in which the Town would be responsible for everything he just mentioned.

Board Member Baker asked about the calculation of the EDU's and if they are different for apartment complexes. Mr. Gallihue said he believes that 60 gallons per bedroom is the calculations used. It is not a 1 on 1 ratio. This is how they size the pipes, and pump stations. There is a State of Maryland Waste Water Guideline manual that would be referred to.

Chairman Phieffer said that the impact study asked for local recommendations from the Board of Education and their thoughts. She asked if Mr. Gallihue did that. He responded that information was included with the analysis. He contacted the Superintendent and Principals of both educational facilities. The analysis is not going to be perfect. There

will be crowding in the schools because it already is crowded. The review of the capital budget and the educational plan were taken into consideration.

Mr. Sullivan said that in Table 4 of the anticipated student generation report indicates that 718 units would be needed in Station Crossing Commons to equal the same number of students generated by Pheasant lakes.

Mr. Sullivan said that you can't change what past public figures have done. The Town approved it. The Maszera Corp. approved it and has paid taxes and he is ready to build. It will not adversely impact the Town and complies with the Comprehensive Plan. They have met all the standards of a Special Exception.

Board Member Baker said for the Special Exception the former Pheasant Lake project has been approved and recorded. You are here to replace that with Station Crossing Commons with ½ of the property being developed. Mr. Sullivan said the approval of the new site plan will result in the replacement of Pheasant Lake. When the proposed site plan is approved, the subdivision lines will not be shown. It will be recorded with a higher level of notes that are present tonight. The images will be identical for the final site plan. Once the site plan is approved, they have to ask for a re-subdivision plat. It will go from subdivided areas to one parcel.

Mr. Alan Wilber identified himself as the owner of a 200 acre farm on the west side of the property and said he was sworn in at the beginning of the meeting. He asked if the outflow of this property will still be coming from the west. Mr. Parker said that they will probably re-design the entire drainage system. Right now with the approved storm water management plan, the large pond in the middle drains through an existing ditch. Right now it is an overgrown ditch. They will maintain the existing drainage conditions. The storm water law requires that they cannot increase any run-off to any adjacent properties. Mr. Wilber said that for 10 years the drainage needed to be upgraded. His family negotiated a deal with Wicomico County and Mr. Maszera. In order to do the drainage improvements, there would be certain access to the planned development of Pheasant Lakes. Apparently with this change and the changing of Pheasant Lake, that agreement doesn't exist anymore. None of the storm water changes that were planned then are valid. The Town was part of that agreement but as far as he knows, it was never signed by Mr. Maszera. Mr. Wilber signed it, the Town signed it but the Maszera Corp. never signed and returned it and it was never recorded. If any extra storm water comes through this project it should go through Maryland Avenue, not through his farm.

Town Attorney Benson said that currently the property is undeveloped and has runoff. With the new Maryland storm water requirements, the runoff cannot increase on the site. Additional runoff cannot be created. By law, the Maszera Corp. has to reduce the runoff and has to maintain the runoff prior to being developed. A lot of engineering is required before they can build. Town Attorney Benson said to simplify what is being said, if 10 gallons is leaving the site today in storm water runoff, there could be no more than 10 gallons of runoff when the project is done.

Mr. Sullivan said that their next step is to meet with the Planning and Zoning Commission. The Planning Commission will bring in DB&F and then they have to go before the County, if the drainage goes outside of the Town limits.

Town Attorney Benson suggested that the Maszera Corp. enter into an agreement with the Wilber's and Oakwood Sod to improve the drainage, because it may or may not need to improve but not because of any additional water that's running off.

Mr. Parker said that it sounds like a capacity issue. If there is an existing drainage problem, then there is an existing drainage problem. This project will not make it worse. Town Attorney Benson said this so called agreement was never signed by Mr. Maszera. Mr. Sullivan may want to get Mr. Wilber's contact information because there may be reasons for everybody to have a conversation about improving the existing drainage problems because it may benefit everybody to do the drainage easement.

Town Attorney Benson said that there are problems with drainage with existing ditches throughout Wicomico County. There are problems right now in Wood Creek. The Town has faced those problems for years. The new storm water management regulations in Maryland, requires that you have to take care of the increase of on-site runoff. If there was a good reason for a drainage easement agreement 10 years ago, then there is still probably a good reason to do it now. He said that when he gets back in his office, he will research it. He seems to have a vague memory of it.

Mr. Sullivan is requesting a Special Exception permit limited to the development shown in the concept plan. Town Attorney Benson said that the information provided to this Board tonight is based on 248 units, with 9 buildings total with 3 story units. Eight will have 24 units and 1 will have 32 units.

Chairman Phieffer said that if this is approved what about conditions that the other section cannot be developed for a number of years. Mr. Sullivan stated that he would have to object. For one, the land could be donated for public use maybe for a park for open space or for school construction. If you would condition the approval of a Special Exception, that property owner could not pursue a Special Exception in respect to that future use of property. You would be taking away his right of due process. Right now any new development would be subject to the discretion of this Board. The Board is concerned with future development. The bank won't lend on property that has restrictions that you can't use it for any particular reason. If he defaults, the bank won't be able to sell it.

Town Attorney Benson suggested to the Board that the motion be made on a preliminary basis and come back in January. The motion can be adopted in January based on the written Finding of Facts.

In taking a preliminary vote, Board Member Baker made a motion to support the Special Exception preliminarily for the apartment complex in the R-2 district for Station Crossing Commons. There was no second to the motion.

Board Member Wells said that he doesn't like that half of the development is open for future growth; the roads and schools cannot handle it. Mr. Wilber's farm land cannot handle it. He had to get an agreement with Mr. Maszera and he hasn't signed that agreement from 10 years ago.

Mr. Sullivan suggested that a condition could be premised upon the acceptance of the re-subdivision of parcel 14 into 2 parcels shown as "remaining land" so that there would be no confusion. Board Member Wells said that at the end of the day, the Town cannot handle 700 plus units. Mr. Sullivan said that with the parcel subdivision and the 2 lands being identified as 2 different parcels of land, those parcels will always and forever have to come before the Board and be limited to the concept plan. The Special Exception would be limited to this concept plan.

Town Attorney Benson stated that what Board Member Wells is saying is that with the undeveloped area you could come back at a later date for the development of apartments on the undeveloped parcel. While the concept plan is for 248 apartments, Board Member Wells wants to make sure that half the area is not being built with the other plans. That would require that the remaining lands be subdivided from this parcel so that this parcel will forever be the subject of a completely different request before this Board.

Town Attorney Benson said if we assume that we do that, under the Town's zoning, the 2 undeveloped parcels still could be used for single family homes as per their right. There had been some discussion about the land being donated for a school. If there was a condition placed for 10 years, the developer could not come back for a Special Exception for apartment complexes or townhouses. Mr. Sullivan said that the condition proposed by Mr. Benson he cannot accept; he must take it back to Mr. Maszera.

Town Attorney Benson asked the Board that if conditions were placed that no new development could happen on the other parcels of land for 10 years, would it change their preliminary vote. The Board said yes, it would change their vote.

Mr. Sullivan, based on information given to him by Mr. Parker said that the developer is willing to agree to a condition placed by the Board that there will be no requests on the undeveloped portion for any additional apartments, duplexes or townhouses for a 10 year period.

A preliminary motion was made by Chairman Phieffer to permit the Special Exception request to allow apartments in an R-2 zoning district for Station Crossing Commons with the condition that there will be no requests on the undeveloped portion for any additional apartments, duplexes or townhouses for a 10 year period, based on the provided documents. Board Member Baker seconded the motion which passed with 3 ayes.

Adjournment

A motion for adjournment was made by Board Member Wells and seconded by Board Member Baker.

Submitted by:

Cindy Fisher
Clerk of Council