

TOWN OF MOUNT AIRY BOARD OF APPEALS

FINDINGS AND DECISION

CASE NO. MA-A-18-01 SPECIAL EXCEPTION HEARING MAY 9, 2018

Applicants: Greentree, LLC (“Applicant”)

Location: North Main Street (MD 808) and Candice Drive, Mount Airy, MD 21771 (“the Property”)

Current Zoning: CC District (Community Commercial)

Acreage: 12.67 acres approximately

Current Use: Vacant

Proposed Use: Mixed Use Special Exception in the CC zone (MXU-CC)

WHEREAS, Applicants seek approval of a special exception to allow mixed use pursuant to a special exception application dated February 15, 2018; and

WHEREAS, the current zoning of the Property is Community Commercial (CC) which, pursuant to Ordinance 2017-7 enacted by the Town Council and signed into law by the Mayor of the Town with effective date of October 1, 2017, created a new special exception for Mixed Use within the CC zone (“MXU-CC”) pursuant to new Sections 112-39, 112-39.1 and 112-62F(29) of the Town Code; and

WHEREAS, at its regularly scheduled Planning Commission Meeting held on March 26, 2018, pursuant to the Town Code, §112-62B, the Town’s Planning Commission took up and recommended approval of the MXU-CC special exception for the Property conditioned upon (1) the minimum use percentage guidelines set forth in Section 112-39.1D and as determined by the Planning Commission pursuant thereto, (2) the requirements and process set forth in Section 112-39.1 and Section 98-61, and (3) associated traffic improvements as determined by the Town in order to mitigate projected traffic impacts and to address expected congestion generated by the proposed development as to all surrounding neighborhoods and any other conceivable areas; and

WHEREAS, Town Staff similarly recommended approval of the special exception under the same terms recommended by the Planning Commission but with the additional condition,

contained in an Annexation Resolution for annexation of adjacent property containing 6.35 acres of land more or less, that Scotch Heather Avenue shall not be extended from the Summit Ridge Development North to the Property; and

WHEREAS, on May 9, 2018, the matter of the special exception application came before the Town's Board of Appeals pursuant to the Town Code, §§112-39C(12) and 112-62; and

WHEREAS, the following members of the Board of Appeals were in attendance: Kevin Jackson (Chair), Keith Gehle, Judi Stull (alternate), and Brian Bieda; and

WHEREAS, the following members of the Board of Appeals were absent: Diane Gleason and Oliver Davis; and

WHEREAS, all witnesses were duly sworn; and

WHEREAS, the following witnesses were called by counsel for Applicant and testified with opportunity for cross-examination:

Robert Scranton, Member of the Applicant

Ronald Thompson, P.E., VanMar Associates, Inc. who was duly qualified as an expert in civil and traffic/transportation engineering

WHEREAS, the following residents, adjoining property owners and/or attendees testified and/or questioned the Applicant's witnesses, with opportunity for counsel for Applicant to cross examine each: Karl Munder, Ian Adams, Charles Katzirubis, Scott Snyder, Bill Scalley, Darlene Lindner, Michael Bewernic, Kevin Daughton, and Enils Bashi; and

WHEREAS, the following exhibits were introduced by both parties as follows:

- Exhibit 1 - Staff Report of Heather Smith, Community Planning Administrator
- Exhibit 2 - Summary of Comments and Concerns Received at March 26, 2018 Planning Commission Meeting (attachment to Staff Report)
- Exhibit 3 - Zoning Map of Town of Mt. Airy (attachment to Staff Report)
- Exhibit 4 - Aerial overview of subject parcel (attachment to Staff Report)
- Exhibit 5 - Annexation Resolution No. 32 (attachment to Staff Report)
- Exhibit 6 - Ordinance No. 2017-7 (attachment to Staff Report)
- Exhibit 7 - Petition for Special Exception (attachment to Staff Report)

- Exhibit 8 - Petitioner's Project Narrative (attachment to Staff Report)
- Exhibit 9 - Petitioner's Exhibit – Greentree Village – Landscape Plan – Sheet 1 of 2
- Exhibit 10 - Petitioner's Exhibit – Greentree Village – Landscape Plan – Sheet 2 of 2
- Exhibit 11- Petitioner's Greentree Rendering

WHEREAS, in summary, **Robert Scranton** testified that he is the President of Catonsville Homes, LLC, is a member of the Applicant and has been in the construction business for 34 years. He identified and introduced Exhibit 11, which was a rendering of the Property and a preliminary concept for development; that the Property is located at Candice Drive and North Main Street; that the Property contains 12.67 acres with a strip of land adjacent to the Property through which a power line runs and a 6.35 acre tract adjacent thereto that is zoned Residential Existing (RE) that will not be able to be developed but will serve as a regional storm water management facility for the Property and another development north of it; that the Property is currently undeveloped and zoned within the Town's Community Commercial (CC) zone, which would permit big box retail uses, hotels, and more intense uses than those that are being proposed with an MXU-CC special exception; that the 2013 Town's Master Plan contemplated mixed use zones and/or uses and that the Property would be subject to mixed use; that the MXU-CC special exception provides more flexibility than the traditional shopping center; that the MXU-CC use is more in harmony with the surrounding property than other uses of right permitted in the CC zone; that the proposal for development at this stage proposes residential townhomes like the elderly housing that had been previously approved by special exception for the Property; that the developer is giving up more intense uses in seeking and applying the MXU-CC special exception; that the current development plans call for the development of 112 townhomes with a primary road network with attached garages; that there would be a park area including a gazebo and parking around it, as well as on-street and off-street parking throughout the property; that the price point for the townhomes is expected to be in the \$300,000-\$400,000 range; that in terms of the commercial use, he envisions service-type of businesses such as salons, eateries, restaurants, banking, professional offices and healthcare; that he as the developer would abide by the minimum percentage guidelines set forth in the Town Code, Section 112-39.1D, as determined by the Planning Commission; that he believes that the development plan can and will otherwise meet the guidelines for the MXU-CC special exception; that currently the property is surrounded mostly by residential property; that he believes that the proposal will be more in harmony with the surrounding property given its less intense uses than a pure CC zone use as a matter of right would permit; that he envisions this to be a high-quality development and a gateway to the Town; that the development plan approval process will include the review and approval of a detailed pattern book, a sample of which (from a different townhome development in Sykesville) was passed around as an example; that as far as the conditions that were proposed in the Staff Report to the granting of the special exception for which application is made, he testified that he is willing to comply with each; that, in response to a question, he stated that some of the townhomes are three stories in the rear exposed

and others differently configured depending on the topography; and

WHEREAS, in summary, **Ronald Thompson** was offered and accepted by the Board as an expert witness in the field of land development, civil and traffic engineering and testified that he is a civil engineer with Van Mar Associates and has been the civil engineer for the Property since the development's inception, including with respect to the previous special exception approved by the Board of Appeals for elderly housing; that he has over thirty years of experience in land development and is a registered Professional Engineer in Maryland, the District of Columbia and other states; that he is also experienced as a traffic engineer and has been accepted as an expert in civil engineering and traffic engineering by the Carroll County Board of Appeals; that the Town's 2013 approved Master Plan, Chapter 4, calls for infill and mixed use development; that in his professional opinion the proposed development plan and special exception (MXU-CC) is compatible with the Master Plan; that a pure commercial development, currently allowed in the CC zone as of right without a special exception, could be five to ten times more intense than what is proposed; that the Property is one of the last remaining undeveloped infill properties in this part of the Town; that in his professional opinion the proposed development of MXU-CC would be harmonious with surrounding neighborhoods; that the requirement of the development pattern book set forth in Section 98-61 for MXU-CC development review elevates the architectural development design as a requirement to development; that in terms of traffic, the traffic increase would be substantially less as opposed to some of the more intense uses that the CC zone would allow; that as currently configured, the proposed development of the Property would place commercial traffic up near North Main Street and the rest of the traffic would flow as residential; that in his opinion, the townhomes that are planned are compatible with the single family homes that surround the property and are consistent with a number of large subdivisions that contain both single family homes and townhouses; that the development standards applicable to MXU-CC development (Chapter 98, Section 98-61) imposes a more intense development review process and that obtaining a special exception is only the first step in a long line of review; that in his opinion, the proposed development with a MXU-CC use would be consistent with all of the general and specific standards set forth in the Town Code, Section 112-62; that most specifically with respect to water and sewer, the Property will be serviced through the Town's public water and sewer systems; that the Town's water supply Well No. 9 was dedicated to the Town, along with certain park land, reserving an allocation of water supply to the Property at issue thereby obviating the need for any new water supply wells for the project ; that storm water management would be handled through facilities on the 6.35 acres that is adjacent to the Property, which is sizable enough to handle storm water management for both the Property at issue as well as a subdivision to its North; that with respect to emergency services, with the Town now employing its own, soon to be fully staffed police department, and with the fire department being proximate to the Property, the proposed development should meet the Adequate Public Facilities Ordinance (APFO) requirements for emergency services; that the APFO compliance will be reviewed by the Town's Planning Commission at concept and final development review stage; that with respect to schools, it is likely that the development will actually benefit the school system in supplying students to schools that may be under consideration for future redistricting by the Carroll County Board of Education; that also with respect to schools, the Brittany Manor

Subdivision just achieved APFO approval with indication that there was adequate school capacity to the year 2022; that he does not believe that there will be any detriment to adjacent land inasmuch as he believes that the proposed development of the Property will be harmonious with surrounding properties; that most of the properties around the Property are developed residentially and that the property across the street is zoned commercial; that in his professional opinion, the development will bring utilities in close proximity to the commercial property across the street thereby providing a source of water and sewer for development of the commercially zoned property across the street; that in his opinion there will not be any negative impact to surrounding properties also in part due to the elevated architectural review process that is required for MXU-CC uses; that with respect to emergency vehicle access, there are two points of access, one on North Main Street and one on Candice; that with as respects the condition recommended for grant of the special exception, which was itself a condition to the annexation of the aforementioned 6.35 acre tract, that Scotch Heather not be extended, he notes that the extension of Scotch Heather is no longer in the Master Plan; that the Town completed a Corridor Traffic Study for Route 27, to which the property is proximate; that the Corridor Study did consider the development of vacant land as background traffic; and that the traffic impact for the proposed development of the Property with an MXU-CC special exception would be lesser to the downtown area than a more intense commercial use.

WHEREAS, in summary, **Karl Munder** testified that he resides at 2002 Field Brook Lane and that he is generally supportive of the mixed use special exception and the proposed development; but that he did have a few suggestions for the developer: (1) that instead of a Scotch Heather extension, a pedestrian/bicycle connection path could be developed, (2) that any requirement to replant trees in mitigation of tree removal due to the development of the Property be replanted on Town property, (3) that payment be made into a fund for park land located off-site in mitigation of open space requirements on the Property; and (4) that the developer consider eliminating townhomes that back up to the residential property to the South; and

WHEREAS, in summary, **Ian Adams** testified that he resides at 6600 Wind Ridge Road; that he is opposed to the granting of the special exception; that he is concerned with the density that is proposed for the Property and that it is not consistent with the residual developments that surround the property; that little to no public space or sidewalks are proposed; that the Master Plan calls for a ratio of three acres per one hundred residents of park land; and that the proposed use with deficient parkland and open space is going to be mitigated at taxpayer expense; that he took issue with the testimony of Mr. Thompson for asserting that adding 112 units would not add traffic (Mr. Thompson clarified subsequently that he did not testify that the traffic not increase, merely that the traffic would be less than a more intensive use allowed in the CC zone); that a number of the examples provided of the more intense CC zone uses for the Property are to which the proposed MXU-CC use was compared exaggerate the difference because the Property is not large enough to permit many of these more intense uses; and addressed a question to Mr. Scranton about whether Mr. Scranton believed would be the effect on the value of surrounding properties to which Mr. Scranton opined that the development may well increase the value of residential properties that surround the development; and

WHEREAS, in summary, **Charles Katzirubis** testified that he resides at 4250 Candice Drive; that while he is not against development in general, he is not sure how he feels about the development proposed for the Property; that he lives where all of the storm water runs from the Property; that to his understanding, the 6.35 acres of adjacent property was owned by the Homeowner's Association and that it reverted or would revert back to the developer if nothing was done with it; he asked if anything could be done or was being planned to prevent the backing up of storm water in the area of his property; that with respect to traffic, he mentioned that cars currently speed through Sterling Glen and he is also concerned that after paving Candice Drive, cracks began to develop after the first rainfall; he asked Mr. Thompson whether or not there were other mixed use properties within the Town to which Mr. Thompson testified that this would be the first of its kind but emphasized that the Master Plan in 2013 was approved indicating that the Town desired mixed used development; and

WHEREAS, in summary, **Scott Snyder** testified that he resides at 4299 Candice Drive and asked a number of questions of the developer: he asked about the the type of storm water management facility that would be placed on the 6.35 acres of property saying that he was concerned about mosquitoes and the need for a security fence in response to which Mr. Scranton, Mr. Thompson and/or the Town Engineer Barney Quinn, who was present and asked to comment, that the storm water management would be a large sand filter and would not be meant to hold a significant depth of water for very long, so mosquitoes are not likely to be a problem and such that a fence would not be needed; Mr. Snyder also asked about what if any plans were in place for signage with respect to Candice to which Mr. Scranton responded that certainly those coming out of the development onto Candice will face a stop condition but that it had not yet been determined whether or not traffic along Candice would receive a stop indication of some sort; and

WHEREAS, in summary, **Bill Scalley** testified that he resides at 6603 Wind Ridge Road; that he opposes the granting of the special exception; that he is against the design of the proposed development and is concerned about traffic (people cutting through the development); that he cannot see how the proposed development blends into the neighboring residential developments; and that he is concerned about water wells running dry in the area as it had before; and

WHEREAS, in summary, **Darlene Lindner** testified that she resides at 1708 Main Street; that she also opposed the grant of the special exception; that her main concern was that she did not think it was a good development plan because the proposed commercial use would be too close to the road; that she disagreed that this would be a good gateway to the Town, that there is already an abundance of traffic there and steadily getting worse, as well as a lot of speeding by motorists through the residential neighborhood; that she is against the townhouse idea that the development presents and states that she herself is in real estate sales and does not believe that the development will help the value of surrounding residential homes; that she is also concerned about mass transit and asked whether or not there would be any Section 8 housing to which Mr. Scranton responded that there will not be any Section 8 housing; and

WHEREAS, in summary, **Michael Bewernik** testified that he resides at 6606 Wind Ridge Road; that he is likewise opposed to the development; that the proposed development is excessively dense; that he was concerned that there would not be sufficient water capacity using as an example a past instance of wells running dry; that townhomes are not what people would look for in rural or suburban areas, but rather younger purchasers would tend to look for townhomes in urban or suburban areas with better restaurants and amenities; and

WHEREAS, in summary, **Kevin Daughton** testified that he resides on 6614 Wind Ridge Road; that this is a small corner piece of property and that he found the proposed development “ridiculous” and “ludicrous”; and that traffic on Route 27 was already too backed up; and

WHEREAS, in summary, **Enils Bashi** testified that he lives just past Wind Ridge and testified that he takes issue with the grant of the special exception and that the development looks more like Severna Park, where he once lived, and that this is not country or harmonious with surrounding properties; and he further charged that nothing was offered by way of specifics with respect to traffic congestion and the other general and specific standards for the grant of the special exception; and

WHEREAS, the proceedings were video and audio recorded and the exhibits were marked and received into evidence.

NOW, THEREFORE, the Board of Appeals upon receiving the evidence and after hearing closing arguments of counsel, unanimously (4 votes to zero) makes the following findings and determinations:

1. That Applicant established by a preponderance of the evidence that Applicant has or can, through the site development review process, meet each of the general and

specific standards for granting the special exception and specifically that:

a. General Standards

- i. The proposed use, including its nature, intensity, and location, is in harmony with the intent of the Town Master Plan and the orderly and appropriate development of the district.
- ii. That adequate water supply, sewerage disposal, storm drainage and fire and police protection are or can be provided for the use.
- iii. That the use of adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature, and height of buildings, walls and fences.
- iv. That the use will have proper location with respect to existing or future streets giving access to it, and will not create traffic congestion or cause industrial or commercial traffic to use residential streets.
- v. That the specific standards (112-62 F) set forth for each particular use for which a special exception may be granted have been met except in the case of nonconforming structures where the Board determines that no adverse impact will result.

b. Specific Standards (Section 112-62F(29))

- i. MXU-CC shall facilitate the integrated and orderly development of commercial, office, and residential uses on vacant tracts of Community Commercial (CC) zoned land in locations where high quality mixed use development can occur in harmony with surrounding land uses.
- ii. Minimum Tract Size: The vacant tract must be a minimum of 10 acres in order to be considered for MXU-CC.
- iii. Minimum Use Percentage Guidelines. A MXU-CC special exception shall be conditioned upon the minimum use percentage guidelines set forth in Section 112-39.1D and as determined by the Planning Commission pursuant thereto.
- iv. A MXU-CC special exception shall be conditioned on the requirements and process set forth in Section 112-39-.1 and Section 98.61.

2. That the Applicant be and is hereby granted a special exception for mixed use in the Community Commercial Zone (MXU-CC) pursuant to §§112-39C(12) and

112-62F.(29) subject to the following conditions:

- a. The minimum use percentage guidelines set forth in Section 112-39.1D and as determined by the Planning Commission pursuant thereto;
 - b. The requirements and process set forth in Section 112-39.1 and Section 98-61;
 - c. Associated traffic improvements as determined by the Town in order to mitigate projected traffic impacts and to address expected congestion generated by the proposed development as to all surrounding neighborhoods and any other conceivable areas; and
 - d. That Scotch Heather Avenue shall not be extended from the Summit Ridge Development North to the Property
3. The exhibits and sign in sheet for witnesses are attached hereto.

ATTEST:

Monika Weierbach,
Zoning Administrator
Town of Mount Airy

Kevin Jackson, Chair
Town of Mount Airy
Board of Appeals

B2021217.DOCX