



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

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October 28, 2013

Mildenberg, Boender & Associates  
6800 Deerpath Road  
Elkridge, MD 21075  
Attn: Maya Mildenberg

RE: Newell Property Lots 1-4  
WP-14-030 (F-14-001)

Dear Ms. Mildenberg:

The Director of the Department of Planning and Zoning considered your request for a waiver from the Howard County Subdivision and Land Development Regulations.

As of the date of this letter, the Planning Director **approved** your request to waive **Section 16.121.(b).(2).(i)** which requires a minimum open space equal to 25% of the total tract area be provided for a subdivision within the R-SC Zoning District.

Approval is subject to the following conditions:

1. Prior to recordation of the final subdivision plat, the developer is required to pay a fee-in-lieu of actual establishment of open space in the amount of \$6,000.00. This amount is compliant with the fee schedule of \$1,500.00 per lot adopted by the County Council.
2. Compliance with all SRC review comments on the final plat and plan, F-14-001, is required prior to signature approval of the final plat.

Our decision was made based on the following:

- Summary of the extraordinary hardship or practical difficulty resulting from strict compliance with the Regulations: Strict compliance with the regulations would create practical difficulty, as the creation of an open space lot would significantly reduce the size of the proposed lots. The required area of open space (25% of the total tract area of 1.14 acres) is small (12,415 sq.ft. or 0.28 acres) and would serve no practical or environmental purpose. Based on the proposed lot configuration and the fact that adjacent Parcels 367 and 460 (which are adjacent to the area on this property that would be suitable for open space) are developed with SFD homes; and therefore there is no potential for expansion via the subdivision of these adjacent parcels.
- The intent of the Regulations will be served to a greater extent through the implementation of the alternative proposal: The Subdivision Regulations prior to the Fifth Edition allowed payment of fee-in-lieu of providing open space for all minor subdivisions if the open space obligation was small in size. However, the current Fifth Edition removed "minor subdivision" as acceptable criteria for the payment of a fee-in-lieu of providing open space. Section 16.121.(b).(2).(i) clearly states, "*The subdivision does not use the optional lot size provision in the R-20 and R-12 zoning district and the DRP has determined that creation of open space is not necessary or desirable*" to go along with items (ii) and (iii) of that section." Furthermore, a qualifying subdivision for the fee-in-lieu must comply with Sections 16.121.(b).(2).(i), (ii) and

(iii) to be eligible to pay the fee-in-lieu, not just items (ii) and (iii). In short, this option no longer applies to R-SC zoned properties.

Section 16.121.(a)(2) requires R-SC zoned properties to provide a minimum of 25% open space lot; and, there is no optional lot sizes provision similar to what is allowed for R-20 and R-12 zoned properties. The R-SC zoning allows SFD lots to be created with a minimum lot size of 6,000 sq.ft. provided 25% open space is provided. However, Section 110.E.1 of the Zoning Regulations permits the development of R-SC zoned property using the R-12 Zoning Regulations which would permit the fee-in-lieu payment for required open space if they can comply with the 12,000 sq.ft. minimum lot size requirement (no optional lot sizes allowed).

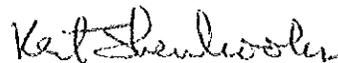
This subdivision proposal is for the creation of four(4) SFD lots with minimum lot sizes ranging from 9,601 sq.ft. to 12,955 sq.ft. and no open space. The proposed lot sizes are more in line with the sizes of existing adjacent developed SFD properties. Strict compliance with the Regulation would result in the creation of much smaller lots (a minimum of 6,000 sq.ft. in size) and the required area open space would be very small and would serve no practical or environmental purpose. The intent of the regulation and the public interest would be served to a greater extent by allowing the developer to pay a fee-in-lieu for the 25% open space requirement in the amount of \$6,000.00. The fee, which will be held in escrow, will be used by the County for the purpose of acquiring open space land which is to be located in the general area of the proposed subdivision. The money shall be used for this and no other purpose.

- Approval of the waiver will not be detrimental to the public interests and will not nullify the intent of the Regulations: The approval of this waiver will not be detrimental to the public interests because no hardship to the public is being created; and the approval of the waiver will not nullify the intent of the Regulation which is to preserve open space during the subdivision process since it will be met through the implementation of the alternative proposal as stated above.

Indicate this waiver petition file number, request, section of the regulations, action, conditions of approval, and date on all related plats, site development plans, and building permits. This requested waiver will remain valid for one year from the date of this letter or as long as this subdivision plan remains in active processing.

If you have any questions, please contact Ms. Pat Britt-Fendlay at 410-313-3371 or via e-mail at [pfendlay@howardcountymd.gov](mailto:pfendlay@howardcountymd.gov).

Sincerely,



Kent Sheubrooks, Chief  
Division of Land Development

KS/JIF/MPB

cc: Research

Jayesh Pancholi – Development Engineering Division  
Real Estate Services Division, DPW  
Richard & Deborah Newell – Owners  
Harmony Builders – Developer  
DPZ File # F-14-001