



**PLANNING COMMISSION  
MEMORANDUM**

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TO: Planning Commission Members

FROM: Robert S. Cohn, AICP, Planning Commission Administrator *RC*

DATE: March 10, 2010

RE: SD 03-07, Ben Garner – Age Restriction

Background

The President of the Board of Directors for the Ben Garner Community, a senior housing project, has submitted a letter of request to amend the minimum age requirement for their development, in accordance with the less restrictive provisions of the current ordinance. The applicant took this request to the Board of County Commissioners (BOCC) on October 27, 2009. The BOCC approved the request but also referred it to the Planning Commission for approval.

The Ben Garner subdivision was approved on 5/21/03. At that time the incentives for development of age-restricted housing (per the Calvert County Zoning Ordinance, the Solomons Zoning Ordinance and the Excise Tax Resolution), were different than what is in place now. Attachment 1 indicates significant changes.

Discussion

The issue that must be addressed by the Planning Commission in this request by The Ben Garner Community to amend their covenants, is whether any approval to change the age restriction must be conditioned on compliance with all the current requirements outlined within Attachment 1. This is a complicated matter necessitating legal advice from Mr. Yacovelle, so staff will defer to his judgment.

Recommendation

Action by the Planning Commission to either approve the request to amend the age restriction provision in the Ben Garner Covenants, or condition such approval on compliance with the current requirements outlined in Attachment 1.

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## Attachment 1

2003 Requirements	Current Requirements
Exempt from Adequate Public Facilities Ordinance (APFO). If subject to APF and schools are not adequate, the APFO hold is 5 years.	Exempt from Adequate Public Facilities Ordinance (APFO). If subject to APFO and schools are not adequate, the APFO hold is 7 years.
Reduced excise tax from \$12,950 to \$5,150	Reduced excise tax from \$12,950 to \$5,150
Exempt from the purchase of TDR's	No exemption (except for bona fide affordable housing agency which may apply to BOCC for waiver) – <u>must</u> purchase five TDR's per lot/unit
No unit requirement for development	The development shall include at least 20 residential units.
No requirement for handicapped accessibility	All units shall be either handicapped accessible or handicapped adaptable.
All residents 55 years of age or older	All of the dwelling units are to be occupied by at least one Age-Qualified Resident
A declaration shall be recorded in Land Records and notes on the subdivision plat and/or site plan indicating: 1) that the project shall be for housing of individuals 55 years of age or older; 2) that if the project is converted to general housing, all units must be converted; and 3) that for every unit converted to general housing, the owner or developer shall use five TDR's.	Covenants shall be placed on the property that specify the age-restricted nature of the proposed community. The covenants shall provide: a) that all of the dwelling units are to be occupied by at least one Age-Qualified Resident; b) that up to two dwelling units may, at the discretion of the Age-Restricted Housing Community Association, be occupied by persons none of whom is an Age-Qualified Resident if at least one of the persons intended to occupy the dwelling unit is a Special Resident; c) that persons, at 19 but under 55 years of age, may reside in a dwelling unit provided the person reside with the Age-Qualified Resident or Special Resident in the dwelling unit prior to the death of the Age-Qualified Resident or Special Resident or prior to the placement of the Age-Qualified Resident or Special Resident in a facility for the care of the elderly or the disabled; d) That a person under 19 years of age may visit a dwelling unit as the guest of the occupants of a dwelling unit, provided that no person under the age of 19 may stay overnight in a dwelling unit for more than two consecutive weeks or for a total of more than 30 days in any 12-month period; e) That except as otherwise required by the federal Fair Housing Act, 42U.S.C. §§ 3601 et seq., the Maryland Fair Housing Law, Md. Code Ann., Art. 49B, §§ 19, et seq., no persons under 19 years of age may reside in any unit, except that a person under 19 years of age may reside in a unit occupied by a Special Resident; f) That any provision of the covenants pertaining to the age-restricted nature of the community may not be amended without the approval of the Board of County Commissioners; g) That none of the units may be converted to general housing unless: (a) conversion is approved by all unit owners, the Board of County Commissioners and the Planning Commission, (b) all of the units are converted, (c) all requirements of Section 7-1.05, Adequate Public Facilities, are met at the time of conversion, and (d) the building excise tax in effect at the time of conversion for the type of dwelling into which the units are converted shall be paid, less the amount of excise tax originally paid.