

BEFORE THE CAMBRIDGE PLANNING COMMISSION

IN THE MATTER OF * CASE NO. TA-2021-004
CHESAPEAKE COMMUNITIES, LLC * APPLICATION TO AMEND HYATT
MASTER DEVELOPMENT PLAN
* * * * *

**FINDINGS AND RECOMMENDATIONS
PURSUANT TO § 2.4.3 OF THE UNIFIED DEVELOPMENT CODE**

The Cambridge Planning Commission (the “Planning Commission”) held a hearing on April 6, 2021 in the Council Chambers at 305 Gay Street, Cambridge, Maryland and via WebEx videoconference to consider the application of Chesapeake Communities, LLC (the “Applicant”) pursuant to § 2.4.3 of the Unified Development Code (the “UDC”) to amend the Master Development Plan for the Residences at River Marsh at the Hyatt Regency Chesapeake Bay Resort (the “Hyatt MDP”). Chairperson Mary Losty, Vice Chairperson William Craig, and Members Jerry Burroughs, Chantay Nelson, Eugene Lauer, Hubert Trego, and George Breig were present, along with Patricia Escher, City Planner, and Patrick W. Thomas, City Attorney.

LEGAL AUTHORITY

Pursuant to § 2.4.3(B) of the UDC, the Commissioners of Cambridge may approve a proposed amendment to an approved Planned Water Resort District (“PWRD”) development plan such as the Hyatt MDP if they find that the proposed amendment:

1. will not have an adverse impact on the use or economic value of any other properties in the development or on surrounding areas;
2. is compatible in all respects with the remainder of the development; and
3. complies with the UDC.

Prior to considering any such proposed amendment, the Commissioners of Cambridge shall first refer the proposed amendment to the Planning Commission for a public hearing, review, and recommendations regarding subsections (B)(1) through (3) above and then hold a public hearing in relation thereto.

SUMMARY OF THE CASE

The Applicant requests an amendment to the Hyatt MDP to include¹ “Multifamily Residential” among the permitted uses on River Parcel 2 (“RP-2”), which currently consist of “Hotel Rooms/Timeshares/Commercial/Retail Space.” The Applicant also requests an amendment to the Hyatt MDP to increase the maximum number of multifamily dwelling

¹ The Applicant characterizes the addition of multifamily residential to the Hyatt MDP as a “clarification,” as it is the Applicant’s position that such use is already permitted in RP-2. While Staff disagrees with the Applicant’s position, the issue is moot assuming the Commissioners of Cambridge approve the proposed amendment.

units/lots in RP-2 from 0 to 32. As more fully set forth in the Applicant's application, the Applicant contends that the proposed amendment is necessary to reasonably attract proposals to repurpose RP-2, which is currently vacant. The existing permitted uses for RP-2 were developed 15 years ago and are no longer relevant to any reasonable and taxable repurposing of the parcel.

The Applicant previously proposed to amend the Hyatt MDP in April 2020 to include multifamily residential among the permitted uses on RP-2 and increase: 1) the maximum building density for multifamily residential lots/units per acre in RP-2 from 15 to 100; and 2) the maximum number of multifamily dwelling units/lots in RP-2 from 0 to 200. Following a public hearing on October 29, 2020, at which the majority of the testimony was in opposition to the Applicant's proposed amendment, the Planning Commission voted unanimously to recommend that the Commissioners of Cambridge deny the Applicant's proposed amendment to the Hyatt MDP. In so recommending, the Planning Commission found that the proposed amendment was not compatible with the remainder of the development. The Planning Commission further found that the proposed amendment, if ultimately approved by the Commissioners of Cambridge, would have adverse economic impacts on other properties in the development. The Planning Commission held a second public hearing on December 8, 2020 for the limited purposes of receiving additional documents and hearing testimony regarding the same. Following the December 8, 2020 public hearing, at which the majority of the testimony was again in opposition to the Applicant's proposed amendment, the Planning Commission voted unanimously that the additional documents and testimony did not change their findings from October 29, 2020 or their recommendation that the Commissioners of Cambridge deny the Applicant's proposed amendment. The Applicant subsequently withdrew that proposed amendment and submitted the current proposed amendment following a discussion at the Planning Commission's March 2, 2021 meeting.

Following a public hearing held on April 6, 2021, the Planning Commission unanimously voted to recommend that the Commissioners of Cambridge approve the proposed amendment, subject to certain conditions. A summary of the testimony and evidence presented during the Planning Commission's April 6, 2021 public hearing and the Planning Commission's findings and recommendations are more fully set forth hereinbelow.

SUMMARY OF TESTIMONY

Ms. Escher first appeared on behalf of Staff and presented a summary of the Applicant's proposed amendment, her Staff Report, and the history of the Applicant's efforts to amend the Hyatt MDP. The Applicant is presently seeking a proposed density of 15 multifamily residential units per acre for RP-2. Ms. Escher believes certain items are missing from the proposed amendment as stated in her Staff Report. There are several applicable criteria in the UDC which would ensure any proposed development of RP-2 will be compatible with the remainder of the Hyatt development as required by § 2.4.3(B)(2) of the UDC, including a Concept Plan application and Critical Area provisions, which include density limitations. Ms. Escher believes the proposed amendment has merit but requires further refinement. Ms. Escher has recommended several conditions in her Staff Report, including addressing certain concerns raised by Maryland Economic Development Corporation ("MEDCO") regarding a 24-foot access and utility easement, setting forth the conditions of approval in the Hyatt MDP, ensuring that any

development have the highest quality of architecture and be in keeping with the existing architectural styles, materials, and colors, building heights, setbacks, and parking based on the other multifamily units in the Hyatt development, and obtaining a height survey by a licensed surveyor of the existing developed RP sites, with any proposed development on RP-2 being consistent therewith. Ms. Escher recommends that the Applicant amend the Hyatt MDP as set forth in her Staff Report and that the public hearing be continued to a later date.

Following Ms. Escher's testimony, Chairperson Losty invited the other Commissioners to propose additional requirements or conditions on the proposed amendment.

Commissioner Lauer expressed uncertainty as to what "multifamily residential" means in the context of the proposed amendment. Commissioner Lauer does not want the multifamily residential units to be rentals; they should be in fee simple ownership or part of a condominium regime. Rental units (*i.e.*, an apartment complex) could devalue other properties in the Hyatt development. Commissioner Lauer stated that he was in favor of the conditions recommended by Staff; however, he proposed adding two conditions. First, there should be an expectation that the multifamily residential units will be owner occupied. Second, any multifamily development on RP-2 should be subject to the same constraints as the existing condominium under its declaration. Such conditions would ensure that an approved development on RP-2 will be compatible with the existing development and not decrease the value of other properties.

Millicent Pitts, a resident of the Willow Oak Condominium, testified that she agreed with Commissioner Lauer's comments. Whatever is developed on RP-2 should be consistent with the existing development.

Bob Brennan, MEDCO's Executive Director, testified that the application warrants further review, though he acknowledged that it had come a long way and was an improvement from the Applicant's original proposal. Mr. Brennan still questions what the final development will look like and believes that it would be prudent to have a better idea of the type of multifamily units being proposed (e.g., condominium, townhome). A small-scale unit could work on RP-2, but Mr. Brennan still has concerns about the easements and walkways and how they will be accommodated, though he believes they can be addressed. Overall, Mr. Brennan believes the instant proposal is much further along and would like to see the issue resolved.

Phillip Hummel, Esq., counsel for MEDCO, referenced a March 18, 2021 letter from his colleague, Erin E. Girard, Esq., and emphasized the points raised therein. Mr. Hummel stated that he supports the recommendations set forth in Ms. Escher's Staff Report. Mr. Hummel believes more information is needed before the proposed amendment can be approved under the UDC. Information such as parking, setbacks, and building location should be included before the proposed amendment can be approved. MEDCO asks that the Planning Commission require the Applicant to submit a complete application and then come back to the Planning Commission for a full review.

Commissioner Trego stated that the Planning Commission has been reviewing the proposed amendment for a year. The Planning Commission has tried to address the concerns that have been raised, and it is time to move on.

Upon questioning from Commissioner Craig, Ms. Escher stated that certain sheets to the Hyatt MDP need to be amended to reflect the Applicant's proposed amendments. Commissioner Craig stated that such amendments could be made fairly easily.

Commissioner Craig, who is a licensed surveyor, stated that a height survey as recommended by Ms. Escher in her Staff Report is not necessary. The height for any development of RP-2 should be consistent with the other units in the development. Commissioner Craig recommended deleting Staff Recommendation (f) and adding new conditions as proposed by Commissioner Lauer. Commissioner Lauer clarified that whatever use restrictions apply to the existing condominium should apply to RP-2. "Weekend rentals" should be prohibited, as they would compete with the hotel.

Ms. Pitts testified that the Willow Oak Condominium Association recently changed its bylaws to permit six-month minimum rentals to avoid "weekend rentals."

William W. McAllister, Jr., Esq., counsel for the Applicant, stated that the Applicant, as the property owner, has the right to relocate the access easement over RP-2 to accommodate the property's development. There is no reason to assume that it will be moved; however, the Applicant has that right. A pedestrian walkway is not part of the easement, but it would be part of a site plan for any development of RP-2. The initial step is to create clarity regarding the multifamily density on RP-2. Architectural requirements will have to go through the City.

In response to the criteria set forth in the UDC, Mr. McAllister stated that many of the concerns that have been raised will be addressed as part of the site plan review process set forth in Chapter 3 of the UDC and are not before the Planning Commission at this time. Regarding the easement across RP-2, Mr. McAllister stated that Section 2.2 of the Declaration of Easements, Covenants, and Restrictions recorded in November 23, 1999 provides that the owner of RP-2 (i.e., the Applicant) has the right to relocate the easement to accommodate the development of RP-2. proposed amendment will not have an adverse impact on the remainder of the Hyatt development. The Applicant is the owner of RP-2, and that has never changed. There is no reason to assume the easement will ever be moved, but the Applicant has that right. The pedestrian walkway is not an easement, but the site plan review can focus on the need for sensible pedestrian traffic. The Applicant is aware that, if the Commissioners of Cambridge ultimately approve the proposed amendment, certain sheets in the Hyatt MDP will need to be amended as stated by Ms. Escher. However, Mr. McAllister stated that the proposed amendments to "Residential Development Data" on MDP-5 are unnecessary because that section does not apply to RP-2 or the other RP properties. Step one has always been to create clarity regarding the multifamily residential density on RP-2. The Applicant "overshot the mark" with the density proposed in the initial application. The density now proposed is that set forth in the Hyatt MDP as it has existed since 2005 (i.e., 15 units per acre). Matters such as architecture should not be a concern at this point. The Applicant has no incentive to build something that is not marketable.

Mr. McAllister believes the current proposed amendment is a compromise. The height of the development is appropriate for discussion as part of the site plan process. With regard to the

three conditions set forth in § 2.4.3(B) of the UDC, Mr. McAllister cited Section 6.2.2 of the Ground Lease between Chesapeake Resort, LLC and MEDCO, which provides that residential use will benefit the resort and strengthen its ability to generate revenue to pay debt service. There is zero evidence that a residential development will be a negative. Concerns such as amenities can be addressed during the site plan review. Regarding compatibility, 32 townhomes seem compatible with the 308 authorized multifamily residences, 144 condominiums in RP-1, 144 condominiums in RP-3, and the townhouses in RP-4. Finally, regarding compliance with the UDC, it would be difficult not to. The Planning Commission will review every step of the development. The opportunity to make sure that any future development of RP-2 does justice to the rest of the development seems beyond dispute. Mr. McAllister stated that there is no need for further meetings and requested that the Planning Commission approve the proposed amendment with the condition that the amendments to MDP-1, MDP-4, and MDP-5 be made, which could probably be accomplished in an hour. The proposed amendment is simply the first step. Mr. McAllister requested that the Planning Commission vote on the proposed amendment. The Applicant simply wants to move forward with multifamily residential use at a density could simply recommend approval with the conditions discussed.

Bob Knopf, Senior Vice President of Quadrangle Development Corporation, the Managing Member of Q Choptank River, LLC, which is the Managing Member of the Applicant, testified that the Applicant has a simple request. The Applicant is simply seeking to build 32 multifamily units on two acres. The units will either be townhomes or condominiums. There is no need to revise the easement. Mr. Knopf is agreeable to having no rental units; he simply wants a vote. However, the proposed amendment, if approved, should not apply to the other RP properties.

Mr. Hummel stated that MEDCO expects the building height and setbacks to be consistent with other condominiums in the Hyatt development. Furthermore, any development on RP-2 should allow access to the Hyatt's parking lots. Mr. Hummel believes it is impossible for the Planning Commission to make the required findings under the UDC based upon the information presented. Upon questioning from Chairperson Losty, Mr. Hummel believed information regarding building height, location, setbacks, access to MEDCO's property, parking, and economic impact is lacking. In response, Ms. Escher stated that much of that information is either already addressed in the Hyatt MDP or will be addressed with the additional amendments proposed in her Staff Report.

Mr. Knopf testified that there is no question that residential development is appropriate. Mr. Knopf approves of a 70-foot height limit, one parking space per multifamily unit, and no rentals.

EXHIBITS

The following exhibits were entered into the record and are attached hereto:

1. Staff Report for Planning Commission Case No. TA-2021-04 (Exhibit 1) with five exhibits thereto, as follows:

- A. MDP-1 – Overall Plan;
 - B. MDP-2 – Parcels SFR1 & SFR2 – Villas;
 - C. MDP-3 – Parcels MFR1 & MFR2 – Townhouses;
 - D. MDP-4 – May 2005 and Feb. 2007 Overlay; and
 - E. MDP-5 – February 2007 Updated Chart;
2. Application submitted by Mr. McAllister on behalf of the Applicant dated March 3, 2021 (Exhibit 2) with four exhibits thereto, as follows:
- A. Revised MDP-5 dated March 3, 2021;
 - B. Applicant’s initial application dated April 8, 2020;
 - C. Declaration of Easements, Covenants, and Restrictions dated November 22, 1999 and recorded among the Land Records of Dorchester County at Liber M.L.B. No. 414, folio 906; and
 - D. Ground Lease dated November 1, 1999 and recorded among the Land Records of Dorchester County at Liber M.L.B. No. 414, folio 943;
3. March 18, 2021 letter from Ms. Girard on behalf of MEDCO (Exhibit 3), with one exhibit thereto, as follows:
- A. MDP-4;
4. March 25, 2021 letter from Brent A. Burkhardt on behalf of the Persimmon Townhouse Condominium Association Board (Exhibit 4); and
5. April 5, 2021 letter from John Breil on behalf of the Willow Oak Condominium Association Board (Exhibit 5).

FINDINGS AND RECOMMENDATIONS

Based upon the documents and testimony before it, the Planning Commission unanimously finds that the Applicant’s proposed amendment to the Hyatt MDP to include “Multifamily Residential” among the permitted uses on RP-2 and to increase the maximum number of multifamily dwelling units/lots in RP-2 from 0 to 32 will not have an adverse impact on the use or economic value of any other properties in the Hyatt development or on surrounding

areas, is compatible in all aspects with the remainder of the development, and complies with the UDC, provided that the following conditions are met:

1. Prior to any hearing by the Commissioners of Cambridge, the Applicant shall present a complete application with the proposed amendments to the Hyatt MDP noted in Ms. Escher's Staff Report as follows:

A. MDP-1 shall be revised to designate RP-2 and reflect the 32 multifamily units in the same manner as the other parcels;

B. MDP-4 shall be revised to include multifamily residential as a permitted use under the H-2 description; and

C. MDP-5 shall be revised as follows:

i. The table "Expansion Phase Hotel/Timeshare/Commercial-Retail/Residential Expansion Elements" shall be modified to reflect the additional units in the last column;

ii. The table "Residential Development Data" shall be modified to reflect the changes, and the RP sites shall have building heights, setbacks, and number of parking spaces listed; and

iii. The table "Total Number of Residential Units (SFR1, SFR2, SFR3, MFR1, MFR2, MFR3)" shall be modified to reflect the additional units in the last column and the date of the modification;

2. Prior to any hearing by the Commissioners of Cambridge, the Applicant shall address the Hyatt's concern regarding a 24-foot access and utility easement that bisects RP-2 and demonstrates that pedestrian access by the hotel guests is maintained;

3. Any and all conditions shall appear on the revised Master Development Plan drawings;

4. Any proposed development of RP-2 shall have the highest-quality architecture and be in keeping with existing architectural styles, materials, and colors in the Hyatt development;

5. The building heights, setbacks, parking, etc. for any proposed development of RP-2 shall be based on the existing development;

6. Ownership of the individual multifamily units must be fee simple or part of a condominium regime; and

7. Any rental use of the units shall be subject to the same constraints as the Willow Oak Condominiums.

Accordingly, the Planning Commission recommends that the Commissioners of Cambridge approve the Applicant's proposed amendment to the Hyatt Master Development Plan, provided the foregoing conditions are met.

ATTEST:

Patricia Escher

Mary Losty, Chair

Date

DRAFT