

**BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS**

October 13, 2009

5:30 p.m.

Mr. Henry Evans called the meeting to order at 5:30 p.m. The secretary called the roll to establish a quorum.

COMMISSION PRESENT:

Mr. Henry Evans; Alderman Carole Hinely; Mr. David Klevan; Ms. Patricia Sherman; Mr. Ron Poe; Mr. Lee Henwood (arrived at 5:51 p.m.)

DEVELOPMENT STAFF PRESENT:

Mr. Jerry Cook, Director of Economic and Community Development; Mr. Josh Whitehead, Director of Planning; Mr. Alan Strain, Attorney; Mr. Wade Morgan, Chief Planner; Ms. Carmen Richardson, Secretary.

Interested Individual(s) present:

Ms. Debra Daws – 6625 Lenox Park Drive, Suite 100, Memphis, TN 38115

Mr. Mark Mayberry – 1075-A Powers Place, Alpharetta, GA 30009

Mr. Evans called the meeting to order and established a quorum.

ROLL CALL: – Mr. Evans – present; Mr. Henwood – absent; Ms. Sherman – present; Mr. Klevan – present; Alderman Hinely – present; Mr. Poe – present; Chairman Boyd – absent

Mr. Evans reminded those in attendance that the Board of Zoning Appeals is a Quasi-Judicial body and as such, the latitude for acting on applications is somewhat limited by State Statute and City Ordinance. He also reminded those appearing before the Board that the meeting is recorded and they would need to identify themselves, give their address and be sworn in for the record. He then swore in the staff.

Mr. Evans stated that he would like to make note that the motions made in all meetings are of an affirmative nature. He stated this does not necessarily mean that the motion will be approved, but that the language will be in an affirmative nature when the motion is made.

Approval of July14, 2009, Minutes

Mr. Klevan made a motion to approve the minutes from the April 14, 2009, meeting that was seconded by Alderman Hinely.

ROLL CALL: -- Mr. Henwood – absent; Ms. Sherman – yes; Mr. Klevan – yes; Alderman Hinely – yes; Mr. Poe – yes; Mr. Evans – yes; Chairman Boyd – absent

MOTION PASSED

SUBJECT: Barzizza Property / Dogwood Ridge – South side of Poplar Ave., east of Kimbrough – Use on Appeal for an assisted-care living facility to be included as part of a retirement community

INTRODUCTION: The request for use on appeal is based on Section 23-348 of the Zoning Ordinance, which states, “Within the R-H residential district the uses listed in this section may be permitted by the board of zoning appeals, provided that the use requested is to be located on a route designated as either a major or collector street on the official major road plan, and that the other requirements set forth in this

division, article II, division 4 and article II, division 2, of this chapter are met: Assisted-care living facilities; nursing homes; accessory buildings and accessory uses customarily incidental to such uses.” The project’s compliance with those requirements are discussed below.

BACKGROUND: The 7-acre site was annexed by the City on September 12, 1973. There have been two previous plans approved for the property in recent years. The applicant requested the rezoning of the 14-acre Barzizza tract at the June 2009 Planning Commission meeting, which recommended denial by a vote of 4-3. The applicant then submitted a new application for the rezoning of 7 acres (Parcel A at the June PC meeting), which was given a recommendation of approval by the June 17th Planning Commission Zoning and Annexation Subcommittee, but subsequently was denied by a tie vote of 3-3 at the full July 7th Planning Commission meeting. The Board of Mayor and Aldermen (BMA) approved an appeal of the Planning Commission decision and rezoned the property on Third / Final Reading on September 28, 2009. The assisted-care living component of the project, requiring a Use on Appeal, was part of the sketch plan submitted to the BMA as part of the rezoning application.

DISCUSSION: The applicant is requesting Board of Zoning Appeals approval of a Use on Appeal for an assisted-care living facility. The applicant states, “This request for the assisted-care living use (which is permitted as a use on appeal) in a congregate care setting is only for a small portion of this proposed senior community. The assisted-care living units are needed to provide an additional level of service for residents of the congregate care community. The assisted-care living units will actually create a lower traffic impact than congregate care units.”

COMMENTS:

1. Section 23-348 required assisted-care living facilities to be located on either a major or collector street. Poplar Ave. is a major road, so that requirement is met.
2. Section 23-87 has additional requirements:
 - a. Minimum 35% open space;
 - b. A 25 foot-wide landscape screen along all rear and side lot lines;
 - c. Minimum two acre parcel; and
 - d. Front yard of 40 feet, side yards of 50 feet and rear yard of 50 feet.

The proposed site plan meets those requirements.
3. In reviewing a proposed use on appeal, the Board of Zoning Appeals (BZA) may consider screening, landscaping, setbacks, etc., in order to determine whether the proposal will have an adverse impact on the adjacent properties. The BZA may require such screening, setbacks or other special provisions deemed necessary to mitigate such negative impacts.
4. If approved by the BZA, the applicant shall proceed to the Planning Commission for site plan review and approval. Additionally, the applicant shall submit to the Design Review Commission a Landscape Plan, Lighting Plan and building elevation plans for review and approval.

Ms. Debra Daws, Representative
Dalhoff Thomas Daws
6625 Lenox Park Drive, Suite 100
Memphis, TN 38115

Ms. Daws stated that she is present tonight on behalf of Formation Development Group. We [she and group] are here to request a use on appeal for an assisted living and memory care facility to be located within a congregate care facility. Its formation is designed to help the senior community that will meet the needs of Germantown’s aging population by providing the facilities for the full management of the

aging process. Ms. Daws further stated that in order to achieve their goals and provide a full service quality senior living community, the request before you tonight is crucial. The proposed community would be a congregate care facility that would contain both assisted living and memory care units.

Ms. Daws proceeded by providing definitions for congregate care, assisted living, and memory care:

Congregate Care is defined as *“a facility for long-term residence, exclusively by persons 55 years of age or older containing common social and recreational features, special safety and convenience features designed for the needs of the elderly and provisions of social services for residents which include meal services, transportation, housing and organized social events.”* Per Ms. Daws, this use is allowed by right within the R-H zoning district.

Assisted Living Facilities is defined as *“a building establishment, complex or distinct part thereof which accepts persons 55 years and older for domestic care which provides on sight to residents, room, board, non-medical assistance services appropriate to the residents’ respective needs and medical services as prescribed by each residents’ treating physician.”* This use requires a use on appeal.

Memory Care is defined as *“a facility or unit that is specifically designed to meet the needs of individuals with Alzheimer’s or cognitive impairment. The physical layout, program, goals, staffing and care plans are specifically designed to address the needs of these individuals.”* Ms. Daws advised that the previous two definitions can be found within the City’s Ordinances, but not memory care. This use would also require use on appeal.

Ms. Daws said that they would like to request, on behalf of the developer, that an allowance of 30% of the overall 184 units requested be allocated for assisted living or memory care units. She advised that the proposed site plan meets the requirements of the zoning ordinance; the property is zoned R-H; the retirement community is located on a major road; the site plan provides in excess of thirty-five percent open space; a twenty-five foot landscape buffer will be provided adjacent to all residentially zoned property; and that the size is in excess of two acres and the proposed development meets all set back requirements.

Ms. Daws stated that the proposed senior facility has four adjacent property lines. The Darrs and Our Lady of Perpetual Help are to the west. The Longs are to the south and the Barzizzas are to the east. She said that they have no opposition from their immediate neighbors and that the twenty-five foot landscape buffer will be provided along these property lines. Ms. Daws said that they would continue to work closely with these neighbors throughout the design and development process. Per Ms. Daws, the developer’s commitment to the project is sincere and pledges to make the senior living community an integral part of the growth and prominence of Germantown. Ms. Daws then stated that the board’s approval is needed tonight to provide a quality, full service senior community.

Mr. Poe asked for clarification regarding the twenty-five foot landscape buffer. He asked if it would be on all property lines or adjacent to any residentially zoned properties. Ms. Daws responded by saying that the proposed facility is surrounded by all residential property; therefore, the twenty-five foot landscape buffer will be on the east, south and west property lines; Poplar Avenue on the north property line will have a twenty foot landscape buffer.

Mr. Mark Mayberry, Developer
Formation Development Group
1075-A Powers Place
Alpharetta, GA 30009

Mr. Mayberry advised that he and group are senior living developers; they don’t develop anything besides senior living. He said that with this project they are proposing a wing of assisted living and memory care

which will be licensed by the State of Tennessee to provide personal care services for those seniors who require more than the services provided (inaudible) living. He further stated that the wing would include a special area for those to be programmed in for residential memory impairments. At ten percent, we're willing to limit our assisted living component to thirty percent of our overall dwelling count. He further advised that the project does not include a skilled nursing component at all. This would require a different form of licensure with a certificate of need. He feels that [providing] assisted living is very important to our continual care; it allows us to serve residents longer and residents that need different levels of care. He said that they frequently have couples move into the independent living facilities. One may develop a need for assisted living and the other doesn't. With assisted living we can still have that couple reside in our community. It would be a tragedy if one had to move away just because one needed a higher level of care that we could not provide. He said that this would be disruptive to the family and the residents and frankly it harms our occupancy. Per Mr. Mayberry, it is important to have full, personal care services like the other communities here in town and that it would be wrong respectfully to deny relatives the right to live in our community. That's why we're asking for the assisted living.

PROPOSED MOTION: To approve a Use on Appeal for Dogwood Ridge, located on the south side of Poplar Ave., east of Kimbrough, to allow an assisted-care living facility, as described in the application.

Mr. Klevan moved to approve a use on appeal for Dogwood Ridge, located on the south side of Poplar Avenue, east of Kimbrough, to allow an assisted-care living facility, as described in the application; Ms. Sherman seconded the motion.

ROLL CALL: -- Mr. Henwood – abstain; Ms. Sherman – yes; Mr. Klevan – yes; Alderman Hinely – yes; Mr. Evans – yes; Mr. Poe – yes; Chairman Boyd – absent

MOTION PASSED

Meeting Adjourned at 5:56 p.m.