



# Charles County Board of Appeals Meeting of March 10, 2015

## Department of Planning and Growth Management Staff Report

**Project Name & Number: K. Hovnanian Homes of MD –  
Board of Appeals - Docket #1341**

**Type of Project: Variance – Chapter §297-95 C. (3) (b)  
Commercial / Residential Development Ratio  
in the CER Zone**

**Prepared by Kirby R. Blass, Planning Division  
For questions, contact the Planning Division at 301-645-0540**

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### I. Applicant & Project Information:

**Applicant:** K. Hovnanian Homes of Maryland, Attn: Mr. Mike Irons (Vice President of Land Development), 1802 Brightseat Road, Landover, Maryland 20785.

**Property Owners:** Washington Homes, Inc., 1802 Brightseat Road, Landover Maryland 20785.

**Agent / Attorney:** Mr. Mark D. Mudd, Law Offices of Mudd, Mudd & Fitzgerald, P.A., P.O. Box 310, La Plata, Maryland 20646.

**Engineer:** Bowman Consulting Group, Ltd., 2530 Riva Road, Suite 200, Annapolis, Maryland 21401.

**Specific Request:** The Applicant, K. Hovnanian Homes of Maryland, is seeking a Variance to Chapter §297-95 C. (3) (b) of the Charles County Zoning Ordinance, Core Mixed Uses. The Applicant desires to reduce the requirement within the Core Employment/Residential (CER) zone from a 50/50 commercial/residential development ratio to a 35/65 commercial/residential development ratio. This variance request equates to a reduction of 15% of the commercial ratio and a 15% increase of the residential ratio.

Per Chapter §297-95 C. (3) (b), “If residential and nonresidential uses are in separate buildings, no more than 50% of the total acreage of the parcel may be devoted to residential uses”. The granting of this Variance will allow the Applicant to proceed with the development of the property in a manner consistent with and complimentary to the existing neighborhood.

In accordance with Chapter §297-95 A. (1), “Core Employment/Residential Zone (CER). This zone provides for development which will successfully integrate a mixture of complementary land uses that are primarily employment and residential but may also include retail, commercial services, and civic uses, to create economic and social vitality and encourage the linking of transportation and land use”.

The Applicant has stated their commitment to comply with all other commercial and residential development regulations associated with the Core Employment/Residential (CER) zone and has provided a conceptual development scheme for clarity. (See Exhibit 5). Approval of the variance request would not grant approval of the conceptual development scheme as currently presented.

**Subject Property:** The property, designated as Parcel 511, within Grid 23, on Tax Map 5, in the 7<sup>th</sup> Election District, is located off of Matthews Road in Bryans Road, Maryland. Tax ID: 07-037961. Since 2005 the property has been zoned Core Employment / Residential (CER) within the Development District and consists of approximately 6.66277 acres. The property is in the shape of a narrow rectangle and is approximately 300’ wide and 970’ in length. Prior to 2005 the property was zoned Central Business (CB). The property was described in a Deed to Washington Homes, Inc. dated June 1, 1972 and duly recorded among the Land Records of Charles County in Liber 260 / Folio 583. The 6.66277 acre property was recorded as Parcel B on Plat 7 of South Hampton (Liber 46 / Folio 309) on April 7, 1995. Since that time the property has remained undeveloped.

**Zoning:** Core Employment/Residential (CER).

**Impact on Surrounding Uses:** The existing property is currently undeveloped and forested. Properties surrounding this location include substantial established residential single-family,

townhouse, and apartment developments to the north, west, and south, within the Chelsea Manor, North Indian Head Estates, South Hampton, South Hampton Village, and Indian Head Village communities. The Bryans Road Shopping Center is located to the east, which contains a Safeway grocery store and other commercial outlets. Please reference the attached aerial, location, and zoning maps provided within the appendices for a full neighborhood overview.

**Environmental Features:**

**Watershed:** The project is located within the Mattawoman Creek Watershed.

**Forest Conservation:** This project will be required to address the requirements of the Forest Conservation Ordinance with the next stage of development.

**Habitat Protection:** The project is not located within a sensitive species project review area. A review by the Department of Natural Resources, Wildlife and Heritage Service, will be required with the forest conservation materials. At that time, a habitat protection plan may be required should any rare, threatened, or endangered species be identified on the project site.

**II. Criteria for Approval and Findings:**

The Applicant, K. Hovnanian Homes of Maryland, is seeking a Variance to Chapter §297-95 C. (3) (b) of the Charles County Zoning Ordinance, Core Mixed Uses. The Applicant desires to reduce the requirement within the Core Employment/Residential (CER) zone from a 50/50 commercial/residential development ratio to a 35/65 commercial/residential development ratio. This variance request equates to a reduction of 15% of the commercial ratio and a 15% increase of the residential ratio.

Per Chapter §297-95 C. (3) (b), “If residential and nonresidential uses are in separate buildings, no more than 50% of the total acreage of the parcel may be devoted to residential uses”.

The granting of this variance will allow the Applicant to proceed with the development of the property in a manner consistent with and complimentary to the existing neighborhood. The conceptual development scheme, entitled “South Hampton Square” currently proposes forty-two (42) townhouse units and four (4) commercial retail buildings. The proposed variance will allow a pedestrian friendly community with direct storefront and a neighborhood style entry, thus avoiding a traditional “strip mall” view that used to be the hinge from the CER zoning to surrounding residential development.

The Board of Appeals must evaluate and consider the standards set forth in Article XXV, §297-416 on Variances, found below, in order to make a determination. The burden of persuasion and of presenting evidence sufficient to allow the Board to reach a conclusion that the required criteria listed in Subsections B and C have been met remains with the Applicant seeking the variance.

**III. Minimum Zoning Requirements:** (Findings by Staff and the Applicant have been annotated in *italics*):

**The Variance Request (Docket #1341) was evaluated based upon the standards set forth in Article XXV Section §297-416 C. 1-6. of the *Charles County Zoning Ordinance*. Findings of the Staff and the Applicant have been annotated in *italics*.**

**§ 297-416. Variances.**

- A. An application for a variance shall be submitted to the Board by filing a copy of the application with the Zoning Officer. Applications shall be handled in the same manner as applications for special exceptions in conformity with the provisions of this article.
- B. The Board is authorized to grant variances from the strict application of these regulations when, by reason of exceptional narrowness, shallowness or shape of specific parcels of property or by reason of exceptional topographical conditions or other extraordinary situations or conditions of specific parcels of property, the strict application of the regulations of this chapter would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of said property. However, the Board of Appeals shall not grant variances that will substantially impair the intent, purpose and integrity of this chapter. This provision shall not be construed to permit the Board, under the guise of a variance, to change the permitted use of land.
- C. In addition to those general findings required in Subsection B above, variance requests shall not be granted unless the following criteria are met:

- (1) That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions of this chapter would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification.

**Per the Applicant:** *The property is exceptionally narrow. A 6.66277 acre, more or less, parcel of land which is encumbered by at least two water/sewer easements which effectively delineate the use of the Property into thirds.*

**Staff Finding:** *Staff concurs with the Applicant that special circumstances exist which are unique to the subject property. They are as follows:*

- 1. The narrowness of the property being only approximately 300' wide x 970' length, surrounded by established existing residential and commercial development.*
- 2. The location of the two water/sewer easements splitting the property into thirds,*
- 3. The desire to keep the commercial component more centralized toward Matthews Road to avoid conflicts with the surrounding residential neighborhoods in a transitional zoning district.*

- (2) That strict enforcement of the provisions of this chapter would deprive the property owner of rights commonly shared by other owners of property in the area.

**Per the Applicant:** *Strict enforcement will create an unwarranted hardship against the Owner. The Applicant is not aware of any other owners facing the same special*

*and unusual circumstances. If a variance is not permitted, the Applicant will be deprived its right to develop its own property, a right which other property owners in the neighborhood are entitled and have exercised.*

**Staff Finding:** *A strict enforcement of the 50/50 commercial/residential development ratio may create an unwarranted hardship against the property owner which could prohibit them from developing the property at all due to the special circumstances which are unique to the subject property listed under the Staff Findings of C. (1) on Page 4 of 7. The Applicant intends to pursue a mixed-use development which will comply with the majority of the Core Employment/Residential (CER) zoning district requirements, excluding only the 50/50 commercial/residential development ratio which would be only slightly revised to a 35/65 commercial/residential development ratio if the variance were granted.*

- (3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the same zone/land use classification.

**Per the Applicant:** *The Applicant intends to substantially comply and develop the Property within the parameters of the CER zoning, the variance being the ratio of commercial/residential development being reduced from 50/50 to 35/65. The Applicant will comply with all other regulations regarding the development of the Property. The Applicant is not asking to abandon the mixed use of commercial and residential development.*

**Staff Finding:** *The Applicant has committed to compliance with all other related regulations applicable to the Core Employment/Residential (CER) zone. Approval of the variance request equates to a reduction of 15% of the commercial ratio and a 15% increase of the residential ratio, not a removal of the mixed-use requirement in its entirety; therefore Staff finds that the granting of the variance will not confer upon the Applicant any special privilege which would be denied to other owners of like property and/or structures within the same zone/land use classification.*

- (4) That the variance request is not based upon conditions or circumstances which are self-created or self-imposed.

**Per the Applicant:** *The Property boundaries were created prior to 1972. Thereafter, the property became subject to the CER zoning. The Applicant acquired the property in 2001. The Applicant intends to develop the property in accordance with the CER intent of a mixed use, and the variance will allow the Applicant to realize the full potential of the acreage as intended by the Code.*

**Staff Finding:** *Staff agrees with the Applicant's statement that the variance request is not based upon conditions or circumstances which are self-created or self-imposed. The property boundaries were defined prior to the 2005 creation of the Core Employment/Residential (CER) zone. Prior to 2005 the property was zoned Central*

*Business (CB) in which the 50/50 commercial/residential development ratio did not exist.*

- (5) That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient justification for a variance.

**Per the Applicant:** *The Applicant does not claim a lack of knowledge or greater profitability as justification of this variance.*

**Staff Finding:** *The Applicant appears to be fully aware of the restrictions associated with the Core Employment/Residential (CER) zone 50/50 commercial/residential development ratio and has not claimed a greater profitability associated with the variance request being granted.*

- (6) That the proposed variance is consistent with the Charles County Comprehensive Plan.

**Per the Applicant:** *The proposed variance is consistent with the Charles County Comprehensive Plan.*

**Staff Finding:** *The subject property is located in the Town Center Core Mixed Use District in the Bryans Road Sub-Area Plan. The intent of this district is to promote higher-density, mixed-use development in a pedestrian-friendly, traditional neighborhood pattern. The Applicant seeks a variance from the requirement to provide a maximum of 50% of residential development on a given parcel in the CER zone, and instead proposes a development with a maximum 65% residential and 35% commercial. Staff finds that the 65/35 residential/commercial ratio will still serve to promote the intent of the Plan, as the Applicant intends to do a mixed use development with a substantial amount of commercial and has stated that they will comply with all other aspects of the CER Zone. Thus, Staff finds that the project is consistent with the Comprehensive Plan and Bryans Road Sub-Area Plan.*

*In regards to Historic Preservation the Applicant is advised to keep the following in mind going forward if the variance is approved:*

*Please note that Charles County Subdivision Regulations, Section 55, including archaeology, will apply for future preliminary subdivision plans and/or final plats. We would recommend coordinating with Community Planning early in the process so the County's contract Archaeologist can review the property to determine if archaeological investigation is warranted.*

*Further, please note that the location of the proposed development is within the "Area of Primary Concern" in the Mt. Vernon Viewshed as documented in the Mount Vernon Viewshed Analysis prepared by EDAW, Inc., in February of 1991. Therefore, staff will take this into consideration when reviewing the height of the proposed buildings, lighting requirements, etc. as part of a preliminary subdivision plan and/or site*

*development plan.*

- D. In granting variances, the Board may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be compatible with the surrounding properties.
- E. A variance may be issued for an indefinite duration or for a specified duration.
- F. The nature of the variance and any conditions attached to it shall be specified in the Board's decision. All conditions are enforceable in the same manner as any other applicable requirement of this chapter. The granting of the variance does not constitute issuance of a zoning permit.
- G. The granting of a variance does not exempt the applicant from complying with all other requirements of this chapter or any applicable county, state or federal law.
- H. Reapplication. Whenever the Board disapproves an application for a variance on any basis other than the failure of the applicant to submit a complete application, no reapplication will be accepted by the Zoning Officer or considered by the Board for a period of one year from the date of the Board's disapproval.
- I. The Board may, at any time, consider a new application affecting the same property as an application previously denied if the new application is substantially similar to the application previously denied. A new application is one that differs in some substantial way from the one previously considered as determined by the Zoning Officer.
- J. The burden of persuasion and of presenting evidence sufficient to allow the Board to reach a conclusion that the required criteria listed in Subsections B and C have been met remains with the applicant seeking the variance.

#### **IV. Recommendation & Proposed Conditions of Approval:**

Planning Staff recommends that the requested variance for a 35/65 commercial/residential development ratio be approved for the subject property, with the following **Conditions of Approval**, for the purpose of adequately and completely addressing the requirements of the *Zoning Ordinance*:

1. Excluding the variance approval of the revised commercial/development percentage ratio, all development of this property will be in accordance with the requirements as written within Chapter §297-95, Mixed Use Zones, of the Charles County Zoning Ordinance.
2. At a minimum bufferyards will be provided in-between this property and the surrounding land uses in accordance with the Charles County Zoning Ordinance, Figure XXII-1: Bufferyards Between Adjacent Zones: Residential Zones. All of the bufferyards will possess integrated perimeter fencing for added privacy between the land uses, both internal and external to the site.
3. The development of this property is subject to future preliminary subdivision and site development plan review and approval processes in accordance with the Charles County

Subdivision Regulations and Charles County Zoning Ordinance.

**V. Appendices:** Attached.