

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

**ZONING MAP AMENDMENT
A-9960-C-01**

DECISION

Application:	Amendment of Conditions
Applicant:	Signature Land Holdings, LLC
Opposition:	N/A
Hearing Date:	November 17, 2021
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Approval

NATURE OF REQUEST

- (1) A-9960-C-01 is a request for the Amendment of Conditions, deleting Condition 5 (Zoning Ordinance 2-2006) of approval of A-9960 which rezoned the subject property from the R-R (Rural Residential) to the M-X-T (Mixed Use Transportation Oriented) Zone.
- (2) Signature Land Holdings, LLC owns the Subject Property containing approximately 7.238+/- acres of land, located on the east and west side of Manning Road East, approximately 120 feet north of Berry Road (MD 228) and approximately 2,300 feet east of the Indian Head Highway (MD 210)/Berry Road intersection, and identified as Outparcels A&B on Tax Map 161, Grid E2, and among the Land Records of Prince George's County in Plat Book ME 252, Plat No. 64, in Accokeek, Maryland.
- (3) No one appeared in opposition to the request. Clifford L. Woods, Accokeek Development Review Commission, testified in support.
- (4) The record of the original Application A-9960-C has been made a part of the record in this case and is incorporated herein by reference.
- (5) At the close of the hearing the record was left open to allow the inclusion into the record of several documents. Upon receipt of these documents the record was closed on December 16, 2021.

FINDINGS OF FACT

- (1) On January 9, 2002, upon adoption of Zoning Ordinance No. 2-2006, the District Council gave approval to A-9960 subject to the following conditions:

1. Prior to the issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency:
 - a. Widening of the southbound approach of Manning Road, to provide four approach lanes, two left-turn lanes, one through lane, and one right-turn lane.
 - b. Operation of the dual left-turn lanes along the westbound MD Route 228 approach.
 - c. Modification of the island in the southwest quadrant of the intersection, to eliminate the eastbound free right turn along MD Route 228 and restriping to provide two receiving lanes for the westbound left turns.
 - d. Restriping the shoulder of westbound MD 228 to provide an exclusive right-turn lane.
 - e. Elimination of the split-phasing of the MD Route 228/Manning Road signal.
2. The total combined development of the western portion (8.57 acres) of the subject property and Pod 2 on CSP 99050 shall not exceed the total development approval for Pod 2 on CSP 99050.
3. The wetland area located at the southwestern corner of this property shall be protected from grading disturbances, throughout the development process. During the review of all subsequent plans, the wetland and the 25-foot buffer area shall be shown on all plans and shall be protected by a platted conservation easement.
4. All Conceptual Site Plans, Preliminary Plans of Subdivision Detailed Site plans, and Tree Conservation Plans proposing residential development on this site shall include a Phase I and Phase II Noise Study, as appropriate, to show the location of the 65 dBA Ldn noise contour (mitigated and unmitigated), and to show that all State noise standards have been met for interior areas of residential and residential type uses.
5. The Conceptual Site Plan shall show the proposed community center in a more prominent location.

6. The bufferyard required between land uses in the M-X-T Zone and uses on adjoining R-R land shall be double.
7. The Woodland Conservation Threshold shall be at 20 percent.

Applicant's Request

(2) The development has proceeded in a manner different from that anticipated in 2006 and as a result there is no longer a need or a demand for two community centers. The original Signature Club was requested to be a gated community, creating access problem to the community center. The development character has since changed from a gated community to regular open development, eliminating any access issues. The Applicant is requesting a deletion of Condition 5 and has proffered covenants guaranteeing all property owners the right to have unlimited access to, and use of, the one clubhouse.

LAW APPLICABLE

Amendment of Conditions

(1) An Application for the amendment of conditions attached to a piecemeal zoning map amendment may be approved in accordance with §27-135(c), which provides, in pertinent part, as follows:

(c) The District Council may (for good cause) amend any condition imposed or site plan approved (excluding Comprehensive Design Zone Basic Plans or R-P-C Zone Official Plans) upon the request of the applicant without requiring a new application to be filed, if the amendment does not constitute an enlargement or extension.

(1) In the case of an amendment of a condition (imposed as part of the approval of the zoning case), the request shall be directed, in writing, to the District Council, and shall state the reasons therefore. Before the Council amends a condition, the Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with [Section 27-129](#), and shall notify all parties of record (including all parties of record on the original application and any amendments thereto) in the same manner as required for an original application. The Planning Board shall post a sign on the subject property, setting forth the date, time, and place of the hearing, in the same manner as required for an original application. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the commendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's decision with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

Good Cause

(2) The District Council may grant Applicant's request if it finds "good cause" to do so. The Zoning Ordinance does not define "good cause" so we must look to court opinions for guidance.

(3) In Kay Construction Company v. County Council, 227 Md. 479, 177 A.2d 694 (1962), the Court of appeals of Maryland considered the definition of “good cause” where a Council resolution was reconsidered upon the resignation of a Councilmember and reversed allegedly for “good cause shown.” The Court held that “mere reargument based on the evidence originally presented to and accepted by the Council” is not good cause. (277 Md. At 488) The Court in reliance on a prior decision (Zoning Appeals Board v. McKinney, 174 Md. 551, 199 A. 540 (1938)), did note that in the absence or presence of a statutory requirement, the administrative body has the right to correct errors in its decisions caused by fraud, surprise, mistake, or inadvertence. More recently the Court of Appeals has held that the determination whether “good cause” exists to allow the waiver of a condition precedent is left to the discretion of the trier of fact and will only be reversed where no reasonable person would take the view adopted. Rios v. Montgomery County, 386 Md. 14, 121 (2005)

CONCLUSIONS OF LAW

Compliance with §27-135(c)

1. The background to this request is that the approval of Zoning Ordinance 2-2006 on January 9, 2006 was carried out concurrently with the detailed design of the adjacent property to the west, the original Signature Club at Manning Village, which had been placed in the M-X-T Zone by the September 1993 *Approved Master Plan and Sectional Map Amendment for Subregion 5*.

In 2005, the Application for A-9960 for the Subject Property was proceeding in parallel with the review of Detailed Site land DSP-04063 for the adjacent Signature Club at Manning Village; and the applicant in each case was the same entity, TSC/MUMA Mattawoman Associates Limited Partnership. The development concepts at the time were for the Signature Club at Manning Village to be a gated, age-restricted community, while the Subject Property (then known as the “Vincent Property”) was proposed or the currently-proposed combination of attached residential development and a live-work component.

Discussions with the Accokeek Development Review District Commission during their review of the two applications resulted in a shared desire to provide for the use of the proposed community center for the meetings of the Accokeek Development Review District Commission, but also share concerns that the location of the Signature Club’s center behind the gates of the private community would be impractical. As such, there was an agreement in principle to instead locate the community center outside the gates of the private community on the Vincent Property. These discussions resulted in the inclusion of a community center in the Vincent Property proposal, and guiding conditions being included in the approval resolutions of both DSP-04063 and A-9960, including Condition 5 which is the subject of the instant request, and a Condition of DSP-04063 which left open the question of whether “public amenity” was needed at the original Signature Club property, and which provided that the appropriateness of its inclusion was to be left to an agreement between the applicant and the Accokeek Development Review District Commission.

Subsequently, market conditions and property owners changed, and the development concept for the Signature Club was revised from a gated, age-restricted private community to a conventional, market-rate development with a mix of attached and detached dwellings, and a community center was approved as a part of the revised Detailed Site Plan. This change in the character of the development of the original Signature Club allows the subject development to be integrated with the original Signature Club development in a way which was not possible previously.

To this end, the two developments will now share a single homeowner's association, and an agreement has been reached between the Accokeek Development Review District Commission and this Applicant to provide for access to the community center for the Accokeek Development Review District Commission for its meetings.

The Staff Report issued in the recent review and approval of CSP-20001 also addressed this history, stating in its Finding 7,

“... the applicant indicates that the units proposed in this CSP will be the next state of the larger Signature Club at Manning Village and will be incorporated into the homeowners association (HOA) of DSP-04063-04 (where 313 units are located to the west of the subject site)) and will have access to the community center in that pod. Any incorporation of this development into the adjacent existing HOA will have to be evaluated and conditioned accordingly, at the time of PPS.

Given the schematic nature of a CSP, the condition has been fulfilled by simply showing the location of the future community center in the center of the larger section. However, the applicant should either provide details of the community center at the time of PPS, as part of the adequate recreation facility evaluation, or provide evidence that this condition attached to the rezoning application has been removed by the District Council.”

The Application of this background to Condition 5 of Zoning Ordinance 2-2006 is that Condition 5 is no longer relevant. As stated above Condition 5 reads,

5. The Conceptual Site Plan show the proposed community center in a more prominent location.

This condition presupposed that there would be a community center on the Subject Property in lieu of one of the original Signature Club property, pursuant to the discussions with the Accokeek Development Review District Commission regarding their access to the center. And while the condition does not explicitly require the construction of a center, it is clearly implicit in its language. This implicit character is reflected in Staff's Finding 7, quoted above.

But the change in the development character of the original Signature Club, the construction of a community center on that property, and the agreement between the Applicant and the Commission providing for their use of the center make a second center redundant. Furthermore,

the proposed development at the Subject Property, 7580 townhouses, including four live-work units, is too small to support a community center on its own without imposing an undue burden on the homeowners through their HOA fees for its maintenance and operation.

The change in the character of the original Signature Club, the agreement with the Accokeek Development Review District Commission for the use of the community center on the original Signature Club property, and the financial burden on the future homeowners of the Subject Property for maintenance and operation of a duplicate center constitute good cause for the amendment of the conditions of A-9960-C to delete Condition 5.

Finally, the deletion of Condition 5 would not constitute an enlargement or extension of the proposed development. §27-135(c)

Purposes

2. The fifteen purposes of the Zoning Ordinance are laid out in section 27-102(a). The harmony of the subject Application with these Purposes is as follows:

- (1) *To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

The approval of the requested deletion would protect and promote the health, safety, morals, comfort, convenience, and welfare of the inhabitants of the County because the deletion of Condition 5 will eliminate the requirement for a duplicate amenity whose maintenance and operation would impose an undue financial burden on the future residents of the subject property.

- (2) *To implement the General Plan, Area Master Plans, ad Functional Master Plans;*

The approval of the requested deletion will not alter the conformance of the Subject Property to the land use and the proposed public facilities recommendations which have been in the Master Plans for almost the last thirty years. The General Plan places the Subject Property in the Established Communities policy area, which seeks context-sensitive development; the requested deletion of Condition 5 will better conform to the current surrounding development context, which no longer provides for an abutting gated, private community. As such the approval of this request will not affect the conformance of the Subject Property to the General Plan.

As to the Functional Master Plans: Protections to the County's Green Infrastructure Network will not be affected by the proposed deletion. The Subject Property is not in a Priority Preservation Area. No Historic Sites or Resources are on or in the immediate vicinity of the Subject Property. The Water Resources Functional Master Plan makes no recommendations which are directly applicable to the consideration of the requested deletion. No proposed site for public safety facilities are on or adjacent to the Subject Property. No Park facilities are recommended on or adjacent to the Subject Property. The requested deletion is not relevant to the County Master Plan of Transportation.

Because the requested amendment does not conflict with the General Plan, the Master Plan or the applicable Functional Master Plans, approval of the subject request will be in harmony with the Ordinance's purpose of implementing those Plans.

- (3) ***To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;***

The requested deletion does not strictly relate to the adequacy of public facilities, which will in any case be reviewed for the Subject Property at the time of a future Preliminary Plan of Subdivision. That review will include a review of the private recreation facilities which will be required in lieu of a public parkland dedication, and if a community center is not proposed, other facilities will be necessary to meet the requirements of the Subdivision Ordinance. As such, the requested deletion will be in harmony with this Purpose.

- (4) ***To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business.***

The future development as delineation on approved Conceptual Site Plan CSP-20001 will recognize the modern provisions of the County Code which guide the orderly growth and development of the County. Particularly relevant provisions are the subsequent adoption of the Landscape Manual, the M-I-OZ, enhanced environmental protections, and the requirements for the provision of adequate public facilities; furthermore, the integration of the Subject Property into the original Signature Club and the shared use of its facilities are a good example of orderly growth and development. As such, the requested deletion is in conformance with this Purpose of the Zoning Ordinance.

- (5) ***To provide adequate light, air, and privacy;***

The requested deletion would be in harmony with this Purpose because the existence of a community center does not directly speak to the provision of adequate light, air or privacy. Arguably, however, the deletion of a duplicate center would provide greater privacy for the future homeowners who would otherwise have surrounded that facility.

- (6) ***To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;***

Similar to Purpose (5), above the requested deletion will be in conformance with this Purpose of the Zoning Ordinance because the deletion of a duplicate facility would provide greater privacy (and thus less adverse impact) for the future homeowners who would otherwise have surrounded that facility.

(7) *To protect the County from fire, flood, panic, and other dangers;*

The requested deletion of Condition 5 will not affect the conformance of the proposed development to this Purpose of the Zoning Ordinance.

(8) *To provide sound sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;*

The requested deletion of Condition 5 will not affect the conformance of the proposed development to this Purpose of the Zoning Ordinance, because the suitable and healthy living environment of the combined developments of the original Signature Club and the Subject Property will still include a shared community center.

(9) *To encourage economic development activities that provide desirable employment and a broad, protected tax base;*

This Purpose is not relevant to the requested deletion, because private homeowner association facilities are not taxed.

(10) *To prevent the overcrowding of land;*

The requested deletion will not affect this Purpose of the Zoning Ordinance as no additional development is proposed in place of the community center which is requested to be deleted.

(11) *To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;*

The requested deletion will not affect this Purpose of the Zoning Ordinance as no net additional traffic would be generated by the community center which is requested to be deleted; trips to the community centers will occur regardless of whether there are one or two, and the location of the center on the original Signature Club is so close to the Subject Property that the use of vehicles to access it is unlikely.

(12) *To insure the social and economic stability of all parts of the County;*

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, a development's conformance with the requirements and regulations of the Zoning Ordinance is prima facie evidence of the Applicant's harmony with this Purpose.

Beyond that, however, the requested deletion would promote the economic stability of the future homeowners at the Subject Property by removing the financial requirement to support the

operation and maintenance of a duplicate facility.

- (13) *To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;***

The requested deletion will not have any effect on undue noise, and air and water pollution, the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features. As such, the approval of the requested deletion would be in conformance with this Purpose of the Zoning Ordinance.

- (14) *To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and***

- (15) *To protect and conserve the agricultural industry and natural resources.***

are not directly applicable to the approval of this request. §27-102(a)

3. In addition to the general purposes of the Ordinance, the specific purposes of the M-X-T Zone are found in Section 27-542(a) of the Zoning Ordinance.

- (1) *To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, major transit stops, and designated General Plan Centers so that these areas will enhance the economic status of the County and provide an expanding source of desirable employment and living opportunities for its citizens;***

The requested deletion of Condition 5 will not affect the conformance of the proposed development to this Purpose of the M-X-T Zone as (1) it will not affect the relationship of the land in question to its site in the vicinity of a major intersection; and (2) development at the site will continue to provide space for both desirable employment – in live/work units – and living opportunities.

- (2) *To implement recommendations in the approved General Plan, Master Plans, and Sector Plans, by creating compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open space, employment, and institutional uses;***

The requested deletions will not affect the conformance of the proposed development to this purpose of M-X-T Zone because it will not affect the use mix, and the new shared Signature Club community will still contain recreational facilities, including a community center.

- (3) *To conserve the value of land and buildings by maximizing the public and private***

development potential inherent in the location of the zone, which might otherwise become scattered throughout and outside the County, to its detriment;

The location of the subject Application will remain in keeping with this Purpose of the M-X-T Zone because the requested deletion will maximize the private development potential of the Subject Property by removing a financial requirement of the future homeowners to support the operation and maintenance of a duplicate facility.

- (4) ***To promote the effective and optimum use of transit and reduce automobile use by locating a mix of residential and non-residential uses in proximity to one another and to transit facilities to facilitate walking, bicycle, and transit use.***

The approval of the requested deletion will not affect the conformance of the development to this Purpose of the M-X-T Zone because the location of the center on the original Signature Club is so close to the Subject Property, that the use of vehicles to access it is unlikely.

- (5) ***To facilitate and encourage a twenty-four (24) hour environment to ensure continuing functioning of the project after workday hours through a maximum activity, and the intersection between the uses and those who live work in, or visit the area;***

The approval of the requested deletion of Condition 5 will not affect the conformance of the development to this Purpose of the M-X-T Zone because the deletion of the duplicate community center will not affect the mix of residential and non-residential uses required by Section 27-547(d)).

- (6) ***To encourage an appropriate horizontal and vertical mix of land uses which blend together harmoniously;***

The approval of the requested deletion will not affect the conformance of the development to this Purpose as it will not inhibit the creation of a harmonious mix of uses.

- (7) ***To create dynamic, functional relationships among individual uses within a distinctive visual character and identity;***

The approval of the requested deletion will not affect the conformance of the development to this Purpose as it will not affect inter-use relationships, visual character, or identity. The new, larger Signature Club community will contain a centrally-located community center, and the deletion of the duplicate center, in addition to relieving the financial burden described above, will prevent the dilution of communal activity focused on the center, actively promoting a dynamic and functional relationship between the single center and its surrounding residents.

- (8) ***To promote optimum land planning with greater efficiency through the use of economies of scale, savings in energy, innovative stormwater management techniques, and provision of public facilities and infrastructure beyond the scope***

of single-purpose projects;

By deleting the requirement for a duplicate facility, the approval of this request will actively implement the Purpose which seeks optimum land planning and greater efficiency.

- (9) *To permit a flexible response to the market and promote economic vitality and investment; and*

The approval of the requested deletion of Condition 5 will actively enhance the conformance of the development to this Purpose of the M-X-T Zone because it will promote economic vitality by relieving the financial burden on the future homeowners to support the operation and maintenance of a duplicate facility.

- (10) *To allow freedom of architectural design in order to provide an opportunity and incentive to the developer to achieve excellence in physical, social, and economic planning.*

The freedom of architectural design as well as opportunities and incentives for planning excellence will not be affected by the requested amendments. §27-542(a)

(4) Given (1) the change in the character of the original Signature Club, (2) the agreement with the Accokeek Development Review Commission for the use of the community center on the original Signature Club property, (3) that the deletion of Condition 5 would relieve the future homeowners of the Subject Property of the financial burden for the maintenance and operation of a duplicate community center and (4) the proposed deletion of Condition 5 does not constitute an enlargement or extension, there is a good cause (substantial reason), and it would not be an impermissible change of mind, for the District Council to delete Condition 5 as requested.

RECOMMENDATION

Based on a finding of good cause, amend the original conditions of approval of A-9960-C by deleting Condition 5, and revise them as follows:

1. Prior to the issuance of any building permits within the subject property, the following road improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency:
 - a. Widening of the southbound approach of Manning Road, to provide four approach lanes, two left-turn lanes, one through lane, and one right-turn lane.
 - b. Operation of the dual left-turn lanes along the westbound MD Route 228 approach.

- c. Modification of the island in the southwest quadrant of the intersection, to eliminate the eastbound free right turn along MD Route 228 and restriping to provide two receiving lanes for the westbound left turns.
 - d. Restriping the shoulder of westbound MD 228 to provide an exclusive right-turn lane.
 - e. Elimination of the split-phasing of the MD Route 228/Manning Road signal.
2. The total combined development of the western portion (8.57 acres) of the subject property and Pod 2 on CSP 99050 shall not exceed the total development approval for Pod 2 on CSP 99050.
3. The wetland area located at the southwestern corner of this property shall be protected from grading disturbances, throughout the development process. During the review of all subsequent plans, the wetland and the 25-foot buffer area shall be shown on all plans and shall be protected by a platted conservation easement.
4. All Conceptual Site Plans, Preliminary Plans of Subdivision, Detailed Site Plans, and Tree Conservation Plans proposing residential development on this site shall include a Phase I and Phase II Noise Study, as appropriate, to show the location of the 65 dBA Ldn noise contour (mitigated and unmitigated) and to show that all State noise standards have been met for interior areas of residential and residential type uses.
5. The bufferyard required between land uses in the M-X-T Zone and uses on adjoining R-R land shall be doubled.
6. The Woodland Conservation Threshold shall be at 20 percent.