

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No. 17-1668

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:00 p.m., June 12, 2017, to consider the application of **RDC HARBOURTOWNE, LLC** (Applicant). The Applicant is requesting special exception for major modifications to the existing legal nonconforming hotel use on Parcel 16 to include the complete interior and exterior renovation and enhancement of floor area, several small mechanical room additions onto existing hotel buildings, the creation of new pathways, and the creation of several outdoor hotel amenities. In addition, the Applicant requests approval for major modifications to the existing legal nonconforming golf course use located on a portion of the property shown as Parcel 1, to include the construction of a new golf pro-shop and pool house building, new golf cart storage building, new pool equipment building, reconfiguration and enhancement of the existing swimming pool area, several new pathways, several outdoor golf amenities and reconfiguration and expansion of the existing parking facilities. The Applicant also requests special exception approval for new golf uses, including new locker room facilities and a golf putting amenity on Parcel 16. The property is located on 9784 and 9789 Martingham Circle, St. Michaels, Maryland 21663 in the Rural Residential/Rural Conservation (RR/RC) zone. The property owner is the Applicant. The request is made in accordance with Chapter 190 Zoning, Article III, §190-16, Article VIII, §190-167, and Article IX, §190-180 of the Talbot County Code (Code).

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, John Sewell, Louis Dorsey and Greg Gannon. Zachary A. Smith, Esquire and Bruce C. Armistead, Esquire, Armistead, Lee, Rust & Wright, P.A., 114 Bay Street, Building C, Easton,

Maryland 21601, represented the Applicants. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for special exception with Attachment A.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.
5. Notice of hearing with a list of nearby property owners attached.
6. Copy of special exception requirements from the zoning ordinance with the Applicant's response to each applicable requirement on Attachment B.
7. Staff Report.
8. Planning Commission recommendation.
9. Sign maintenance agreement.
10. Site Plan by Lane Engineering, LLC, dated February 3, 2017.
11. Floor Plans.
12. Elevations of the Resort Area—Exterior Improvements, dated March 10, 2017.
13. Critical Area Commission comments dated May 31, 2017.
14. Email from David Redman, Maryland State Highway Administration, dated May 19, 2017.
15. Authorization letter from Richard Cohen, dated February 28, 2017.
16. Independent Procedure Disclosure and Acknowledgement Form.

17. Aerial photograph.
18. Board of Appeals Decision No. 655.
19. Board of Appeals Decision No. 690.
20. Board of Appeals Decision No. 15-1641.

In his opening statement Mr. Smith described the application as consisting of three separate parts. The first is a request for approval of major modifications of the existing hotel use on the hotel area of the property. The second is a request for approval of major modifications of the amenities area on the south side of the property. The third is a request is for a special exception to permit the relocation of ancillary golf uses on the hotel area property that have previously been on other areas of the resort property.

The Harbourtowne resort is located north of the Town of St. Michaels in a community known as Martingham. The use was established in the 1970s and modified several times since then. When the Critical Areas laws were enacted the uses became non-conforming uses and modifications to the uses and structures are restricted by those laws.

The use consists of a hotel with 111 guest rooms, conference and banquet facilities, a restaurant, and an 18-hole golf course. Until recently there was a golf pro shop. The Applicant is not proposing to intensify the use, increase the size of any buildings, or increase the number of guest rooms. The Applicant basically wishes to renovate the current uses to bring it up to the standards of a first class resort.

The principal of RDC Harbourtowne, Richard Cohen, is the same principal behind the Inn at Perry Cabin property in St. Michaels. He is a successful real estate developer and the owner of many other hospitality or resort style properties in other areas of the country. He acquired the Inn at Perry Cabin property in 2014 and the Harbourtowne resort property in 2015. He proposes to invest in

improvements to the Harbourtowne resort and make it available for use by guests of the Perry Cabin property.

The first Witness was Bill Stagg, Lane Engineering, 117 Bay Street, Easton, Maryland 21601. Mr. Stagg described the property and reported that the Applicant is not proposing any new buildings save for a few small structures that are necessary for certain utility uses that have previously been approved administratively.

The hotel building will be completely renovated and some of the hotel rooms may be combined to make larger suites resulting in a smaller number of rooms. Some of the hotel parking area will be relocated to the golf course area. The hotel will be improved by a fitness area and some increased locker room space. The hotel area will also have a new putting course.

The pool near the golf course will have a new bath house. The current bath house does not meet code. In that same building there will be a pro-shop replacing the former pro-shop which has been demolished. The Applicant is proposing a new lap pool and a pool equipment room and a small room for golf course caddies. There will also be various other amenities associated with the improved golf course.

The course will not be a PGA-type course. The facility and the surrounding infrastructure are too small to support a PGA event. The owner is planning to refer to the golf course as the "Links at Perry Cabin" and the hotel as the "Lodge at Perry Cabin."

Mr. Smith said that the proposal is supported by the County Comprehensive Plan which encourages the reinvestment in existing facilities in the County. He also noted that the Critical Area Commission does not oppose the proposal as long as the existing uses and structures are legal non-conforming uses and structures, which they are.

In response to a question from a Board member relating to the new parking area Mr. Stagg said that the screening proposed should be adequate. He also said that the architect for the project has changed.

In response to a question from another Board member regarding traffic Mr. Stagg said there will be a minor increase in traffic at some times but the Applicant is eliminating a restaurant use and some reduction in hotel rooms. With valet parking many of the guests will be shuttled from the hotel to the golf course in golf carts. Mr. Smith said the golf course will not be open to the public but will be restricted to members and hotel guests only. The proposal meets all County parking area requirements.

The next witness was Jay French, 9628 Martingham Circle, St. Michaels, Maryland 21663. Mr. French is the President of the Martingham Utilities Cooperative. The Cooperative owns the roads and manages the water distribution system in the subdivision which includes the Harbortowne resort and 313 homes in the community.

Mr. French said that he is also a board member of the community property owners association and is specifically responsible for road maintenance within the community. When the Applicant purchased the hotel and golf course in the Martingham community both the Cooperative and the homeowners association expressed concerns regarding safety of and potential damage to the roads from construction equipment to representatives of the new owner. He said that the roads are not built to County road specifications. They are very narrow. He provided the Board with some photographs of the roads in the community. They were admitted as Residents' Exhibit No. 1.

Mr. French said that the County Planning Office originally supported the Martingham residents by recommending that Board of Appeals require the Applicant to reach a written agreement for road maintenance; however, that recommendation was overridden by the County Attorney.

He said that since the Applicant began its reconstruction efforts it has not made any effort to coordinate its use of the community roads with the Cooperative, including their ongoing use of construction entrances for heavy construction equipment. He said that outside contractors are daily using the subdivision roads without consideration of residential traffic and, in some circumstances, have damaged the roads.

Mr. French said that the uses planned by the Applicant will create much more traffic on the community roads, especially since the Applicant is adding off-site hotel guests as potential users of the golf course and other amenities in the community.

He asked that the Board of Appeals require that any approval of the special exception be conditioned on a written agreement between the Applicant and the Cooperative regarding community road use and maintenance. He said the community is not opposed to the renovations, improvements, and uses proposed by the Applicant. The community members believe that the various special exception requirements, in their entirety, support their position that the Board may impose such a condition.

He said that despite efforts by the community property owners association and the Cooperative the Applicant has not cooperated in any way regarding construction traffic and road maintenance. He further suggested that the Board of Appeals defer any decision on the application until the parties reach a written agreement regarding the community roads during construction and thereafter.

The next witness was David Prevost, President, Martingham Property Owners Association. He said that, in general, the residents are not opposed to the Applicant's proposed improvements. They are however concerned with the lack of communication between the community and the Applicant. He said that the Applicant's plans present an opportunity for all of the concerned parties to agree on how best to insure the continued safety and maintenance of the common roads.

In response to a question from a Board member Mr. Prevost confirmed that there has been an unwritten agreement between the former owner of the hotel and golf course properties where the former owner contributed \$10,000 per year for continued maintenance of the community roads. Mr. French said that the community has not done any traffic studies. Mr. Prevost said that he would welcome the Applicant being represented on the Board of the community association.

Mr. Armistead said that it is unlikely that the Applicant's proposals will increase traffic on the community roads. He said that the owner has said to him that the Applicant will be responsible for any road damage done during construction. He also understands that any change to the road surface will have to be done with the permission of the Cooperative. He did not see any problem with reaching an agreement but did not think it was a matter for the Board of Appeals.

Mr. French responded that the Board cannot force a written agreement but it can make it a condition of approval. Mr. Prevost agreed.

In response to a Board member's inquiry regarding a continuance for the purpose of reaching an agreement Mr. Smith said that the Applicant could be unfairly held hostage by the community.

Mr. Armistead said that he would take the community's concerns to the owner.

Mr. French and Mr. Prevost reiterated the concerns of the community.

A member of the Board suggested that the hearing could be continued for two days to see if the parties could reach some form of an outline for a future agreement. There followed a general discussion between Board members, the attorneys, and the witnesses regarding the possibility of some form of an agreement between the parties.

The next witness was John Lipke, 9767 Martingham Circle. He is the property owner adjacent to a proposed new parking lot. The Applicant did not approach him about the proposed new parking lot. He

expressed concerns about the barrier of trees between his property and the lot and a proposed fire suppression tank.

Mr. Stagg described the fire suppression tank. He also said that the Applicant is proposing to maintain vegetative screen between his property and the lot.

The next witness was Dick Kelley who lives in the Quail Hollow condominiums in the community. He raised the issue of berms on the golf course but the Board advised him that the issue of berms is not at issue in the current application.

Thereafter there was a general discussion of the application among the members of the Board. Following that discussion Mr. Jones made a motion that the hearing be continued for two days to permit the parties time to attempt to at least reach an outline for a possible agreement regarding road maintenance. Mr. Sewell seconded the motion. It was approved by a vote of 5 to 0 and the hearing was continued to June 14, 2017 at 7:00 p.m.

The hearing reconvened on June 14, 2017. At that time David R. Thompson, Esquire, 111 East Dover Street, Easton, Maryland 21601, appeared representing the Martingham community. He and the Applicant's representatives reported that the parties had reached an outline of a road maintenance agreement which will serve as an outline for an eventual written agreement. The parties represented that they would be able to negotiate in good faith to reach a final agreement and suggested that the Board approve the Application with a condition that the parties agree to continue such good faith efforts to reach a final written agreement. The Applicant submitted the outline as Applicant's Exhibit No. 1.

There being no further evidence, the Board considered the application. Upon motion duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.



2. The proposed use is consistent with the purposes and intent of the Talbot County Comprehensive Plan and complies with the standards of the land use district in which it is located. The property has been used as a golf resort, hotel and restaurant since the 1970s. The Applicant is proposing to redevelop and enhance the existing uses of the property with considerable reinvestment. This is consistent with the Plan, Chapter Seven, containing language that “(t)he County should support and encourage the appropriate enhancement, redevelopment and reinvestment in existing tourism related nonconforming structures and uses so that they may contribute positively to the County’s economic base.”
3. The proposed use will comply with the standards of the zoning district in which it is located, except as those standards may have been modified by the granting of a variance. The proposed uses are continuing legal nonconforming uses.
4. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses and with existing and potential uses in its general area, and will not be detrimental to the economic value of neighboring property. The proposed exterior structural modifications are to improve the appearance, not size of existing hotel. The plan indicates that there will be an overall reduction in lot coverage.
5. The use will not constitute a nuisance to other properties and will not have significant adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances. The proposed uses are the same as they have been for over 35 years. The construction period may create some annoyances and inconveniences but they will be temporary.

6. The use will not have significant adverse impacts on public facilities or services including roads, schools, water and sewer facilities, police and fire protection, or other public facilities or services. The property is served by a non-public water system so there will be no impact on public systems. There should be no significant increase in either water use or sewage disposal needs as a result of the improvements. The proposal will have no impact on schools. The modified use will not have any significant impacts on public roads. Existing levels of police and fire protection will not change and are sufficient for any foreseeable emergency needs created by the use.
7. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic. The existing traffic patterns will not change in any significant way and the Applicant plans include pathways that may improve safety for residents and guests. The use will not impact marine traffic.
8. The use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity. Traffic associated with the proposed use will be similar to what it has been.
9. Any vehicle access to proposed off-street parking areas and drive-in facilities are designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. The proposal will not result in a significant increase in commercial and truck traffic using residential streets and will not create a hazard to developed residential areas. Commercial truck

traffic associated with the proposed use will not conflict with nearby residential uses and will not create a hazard.

10. The proposed use will not adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife. Modifications are proposed in and around areas that are already developed. The project proposes to increase plantings and decrease lot coverage. Any existing wildlife on the property it will not be impacted by the proposed use.
11. The proposed use will not adversely affect any adjacent existing agricultural uses. There are no nearby agricultural activities. The proposed use will have no such impact.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **RDC HARBOURTOWNE, LLC** (Appeal No. 17-1668) is **GRANTED** the requested special exception, consistent with the evidence submitted to the Board of Appeals and subject to the following conditions. (The conditions set forth herein apply to the Applicant and to any of its successors or assigns.)

1. The Applicant shall commence construction on the proposed improvements within twelve (12) months of the date of this Decision.
2. The Applicant shall submit and comply with a landscaping, screening and street tree plan consistent with the Talbot County Code.
3. The Applicant shall obtain County site plan approval for the hotel, conference center and amenity parcel.

4. The Applicant shall apply for a “certificate of nonconformity” for the lot coverage on the hotel and conference center parcel.
5. The Applicant, the Martingham Property Owners Association, and the Martingham Utility Cooperative shall engage in good faith attempts to reach a written agreement regarding future community road use, maintenance, improvements, and safety.

The vote of the Board of Appeals was five to zero to grant the special exception subject to the aforementioned conditions.

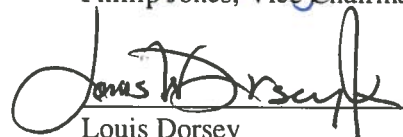
GIVEN OVER OUR HANDS, this 5th day of September, 2017.

**TALBOT COUNTY BOARD OF APPEALS**

  
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Paul Shortall, Jr., Chairman

  
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Phillip Jones, Vice Chairman

  
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John Sewell

  
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Louis Dorsey

  
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Greg Gannon

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