



TOWN OF BOONSBORO

DEPARTMENT OF PLANNING, ZONING & ENGINEERING
WWW.TOWN.BOONSBORO.MD.US ♦ 301-432-5690

PROPOSED AMENDMENT TO AMENDMENT TO ANNEXATION AGREEMENT: FLETCHERS GROVE, DEAN 8486, LLC and RINGLEY, LLC
STAFF REPORT
June 26, 2018

PROJECT: Amendment to Annexation Agreement, Fletchers Grove, Received 05.22.2018

OWNER/DEVELOPER: Dean 8486, LLC
c/o Jim Draper
11611 Harp Hill Road
Myersville, MD 21773

TAX ID: TM 0068 / P 0058, MR ZONE

LOCATION: North and West of Mapleville Road, East of Burton Way and Chase Six Blvd

PROPOSAL: The attorney for James A. Draper, the Managing Member of Dean 8486, LLC and Ringley, LLC, submitted a request to amend the Annexation Agreement to eliminate the requirement for senior housing (Paragraph 3) and to defer the deadline for bonding the construction of Chase Six Boulevard (Paragraph 6) to a later phase of the property's development.

PROJECT NOTES:

1. This request amends the Annexation Agreement for Ringley, LLC and Dean 8486, LLC (dated December 28, 2006), eliminates the requirement for senior housing under paragraph 3 and defers the deadline for bonding the construction of Chase Six Boulevard under paragraph 6 to a later phase of the property's development.
2. This amendment would delete "Paragraph 3. Senior Housing." and replace the paragraph with "Paragraph 3. Intentionally deleted by this amendment." *This would eliminate the requirement to provide for senior level housing in the form of single story duplexes as part of the first site plan submitted to the Town for development of the property.*
3. This amendment would delete "Paragraph 6. Chase Six Boulevard." and replace the paragraph with the following: "Paragraph 6. Chase Six Boulevard. The owners shall be responsible to construct Chase Six Boulevard (to include a completed intersection at Maryland Route 66). The owners will bond the estimated cost of such construction upon issuance of the 26th building permit for the 53-lot Phase 3 of the Fletcher's Grove subdivision (known as "Dean North") being that portion of the property located on the north side of Chase Six Boulevard. The owners will complete the construction of Chase Six Boulevard (to include a completed intersection at Maryland Route 66) prior to the issuance of the first (1st) building permit for that later phase of the Fletcher's Grove subdivision known as "Dean South." *This would defer the requirement to bond the estimated cost of the construction of Chase Six Boulevard from the recordation of the first final subdivision plat for the property to the issuance of the 26th building permit for "Dean North."*



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STAFF COMMENTS:

1. The Town's Attorney reviewed the proposed amendment and took no issue with the legality of amending the annexation agreement by post-annexation modification per Article 4-103 of the (MD) Land Use Article. The provisions regarding bonding and senior housing do not appear to modify or violate the limitations on uses and densities of development in the original agreement.
2. Page 1: The entirety of the property subject to this amendment to annexation agreement is zoned MR (Multi-Family Residential), not TR, TC, or GC.
3. Page 1: The reasons cited for this request are a.) Difficulty that the owners have experienced marketing a senior housing product, and b.) A development timing issue and impediment to development progress associated with bonding road construction (Chase Six) prior to first final plat recordation.
4. Page 2: Staff is interested in knowing what other developments are being referenced in the statement that, "...other developments have since occurred or are planned that include a senior housing component.", because this is being used as a reason that Paragraph 3 is no longer necessary.
5. Page 2: Single Family Homes will still require a Special Exception in the MR zoning district, even if the age restriction (Paragraph 3 of the Annexation Agreement) is eliminated.
6. Page 2: Chase Six Boulevard is a critical piece of infrastructure for the Town. Staff have concerns about altering Paragraph 6 of the Annexation Agreement, which requires the owners to bond the cost of construction of the road prior to the recording of the first final subdivision plat for the Property.
7. Page 2: Staff have concerns about the timeline offered by the amendment of Paragraph 6. Staff would suggest either no change to the original annexation agreement OR setting a deadline for the completion of Chase Six Boulevard upon the completion of "Dean North" after bonding the cost of construction prior to recordation of the first final plat ("Dean North"). It is also staff's opinion that the construction of Chase Six Boulevard should be complete prior to the Town accepting any infrastructure responsibility for "Dean North."
8. Page 2: It is staff's initial opinion that the developer has 89 allocated sewer taps EDU's remaining. This is based upon a letter, dated January 12, 2010, that states, "...the total amount of sewer taps currently available for the properties within Fletcher's Grove is 91 sewer taps." 2 EDU's were assigned to the first commercial development in Fletcher's Grove (Antietam Spirits), which results in 89 remaining.
9. Any amendment would require Mayor and Council approval, because the annexation agreement was signed on behalf of the Mayor and Council. The Planning Commission's role is to recommend for or against the proposed amendment, and its recommendation should be sent to the Mayor and Council. The recommendation may include any changes proposed by the Planning Commission.

STAFF RECOMMENDATION:

Staff's recommendation to the planning commission is two-fold. First, staff recommends that the Planning Commission consider a recommendation of approval to the Mayor and Council for the proposed change to Paragraph 3 of the Annexation Agreement, which would remove the developer's requirement to provide for senior level housing. Second, staff recommends that the Planning Commission recommend denial of the proposed change to Paragraph 6, which would defer the deadline for bonding the construction of Chase Six Boulevard, and consider adding language to the amended annexation agreement that sets a date and conditions for the completion of the construction of Chase Six Boulevard.

Respectfully Submitted,

Ethan Strickler
Town Planner / Zoning Administrator

RECEIVED

David A. Severn, Principal
240.772.5200 Phone
240.772.5135 Facsimile
DSevern@offitkurman.com

April 23, 2018

VIA HAND-DELIVERY

Honorable Mayor Howard W. Long
And
Council of the Town of Boonsboro
C/o Bruce Zimmerman, Interim Town Manager
Town of Boonsboro
21 North Main Street
Boonsboro, MD 21713

Re: Annexation Agreement dated December 28, 2006; Resolution No, 2006-07; Esther Dean, Ringley, Courtney and Dean 8486 Property

Dear Mayor Long and Town Council Members:

This office represents James A. Draper, the Managing Member of Dean 8486, LLC and Ringley, LLC who along with Esther Marie Dean and Robert E. & Sheryl Courtney are the owners (collectively, the "**Owners**") of the property located along the west side of Maryland Route 66 (Mapleville Road) northeast of the intersection of U.S. Route 40-A Maryland Route 66, consisting of 35.8062 acres of land, more or less (the "**Property**"). As you know, the Property was annexed into the corporate limits of the Town by Resolution No. 2006-07 enacted by the Mayor and Council of Boonsboro on December 28, 2006 (the "**Resolution**"). As you are also aware, the Mayor and Council simultaneously entered into an Annexation Agreement with the Owners dated December 28, 2006 (the "**Annexation Agreement**"). The Annexation Agreement set forth the terms, conditions and understandings between the Owners and the Town for the annexation of the Property including but not limited to its rezoning to the Town's TR, TC and GC zoning classifications.

Since entering into the Annexation Agreement, the Owners have experienced difficulty in marketing for sale the senior housing product required under paragraph 3 of the Annexation Agreement entitled, "Senior Housing" as part of the next phase of the Fletcher's Grove subdivision. In addition, the requirement in paragraph 6 of the Annexation Agreement entitled, "Chase Six Boulevard" for the Owners to bond the cost of construction of Chase Six Boulevard prior to the recording of the first final subdivision plat for the Property has created a development timing issue and impediment to the progress of the Fletcher's Grove project.

For the reasons set forth herein, the Owners are respectfully requesting the Town to amend the Annexation Agreement to eliminate the requirement for senior housing under

paragraph 3 and to defer the deadline for bonding the construction of Chase Six Boulevard under paragraph 6 to a later phase of the Property's development.

Since the annexation of the Property the Owners have been actively attempting to complete its development as a continuation of their Fletcher's Grove subdivision. In that time they have had a very difficult time soliciting interest in a senior housing component for the project given the size of the parcel. Typically, senior housing projects require extensive amenities and common facilities that cannot be supported on smaller parcels of land. Additionally, while the lack of senior housing in Boonsboro was a concern of the Town at the time of annexation, other developments have since occurred or are planned that include a senior housing component.

In place of senior housing, the Owners plan to construct single family homes that are not age-restricted. The completion of this project will result in the construction of the critical final link of Chase Six Boulevard and its connection to Maryland Route 66. As part of its development plans for Fletcher's Grove, the Owners will continue to work with the Maryland State Highway Administration ("SHA") to finalize plans for the new Maryland Route 66 intersection with Chase Six Boulevard.

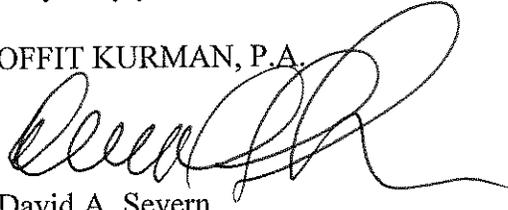
Regarding the deadline for bonding the construction of Chase Six Boulevard under paragraph 6 of the Annexation Agreement, again the Owners need additional time to coordinate with SHA the design and costs of its connection to Maryland Route 66. The Owners simply request that the bonding deadline be deferred to the date of issuance of the 26th building permit for the 53-lot Phase 3 of the Fletcher's Grove project known as "Dean North." With this extension of the bonding deadline, the Owners will agree to complete Chase Six Boulevard and its connection to Maryland Route 66 prior to the issuance of the first (1st) building permit for that later phase of the project known as "Dean South."

With these amendments, the Owners can move forward to obtain final approvals of the single family phase of the Fletcher's Grove project known as "Dean North" and then move to recording "Dean South" thereafter. The Owners have secured the allocation of ninety one (91) sewer taps from the Town that they believe will be needed shortly to serve the anticipated vigorous sales of the single family units in the Fletcher's Grove project if the senior housing requirement is removed and the bonding deadline is deferred as requested.

I have enclosed a proposed First Amendment to the Annexation Agreement to further confirm the Owners' proposed modifications to the referenced provisions of the Annexation Agreement. Please review the enclosed Amendment and let me know when it will be scheduled for consideration by the Mayor and Council. Thank you for your time and consideration.

Very truly yours,

OFFIT KURMAN, P.A.



David A. Severn

Enclosure: as stated

Cc: Jim Draper

William C. Wantz, Esquire, Town Attorney

Esther Marie Dean

Robert & Sheryl Courtney

Bill Brennan, B&R Design Group

W. Carvel Wright, Jr., Chairman, Boonsboro Planning Commission

4848-0838-9214, v. 1

AMENDMENT TO
ANNEXATION AGREEMENT

THIS AMENDMENT TO ANNEXATION AGREEMENT (this "**Amendment**"), made as of this 21st day of APRIL 2018, by and between ESTHER MARIE DEAN ("**Petitioner Esther Dean**"), RINGLEY, LLC, a Maryland limited liability company ("**Petitioner Ringley, LLC**"), ROBERT E. COURTNEY and SHERYL J. COURTNEY (collectively, "**Petitioner Courtney**"), and DEAN 8486, LLC, a Maryland limited liability company ("**Petitioner Dean, LLC**") (Petitioner Esther Dean, Petitioner Ringley, LLC, Petitioner Courtney, and Petitioner Dean, LLC are herein collectively called "**Owners**"), and the MAYOR AND COUNCIL OF BOONSBORO, a body politic and corporate of the State of Maryland ("**Town**").

WHEREAS, the Owners and the Town entered into an Annexation Agreement dated December 28, 2006, (the "**Annexation Agreement**") pursuant to the Town's enactment of Resolution No. 2006-07 on December 28, 2006 (the "**Resolution**"), that annexed into the corporate limits of the Town those certain parcels of real property situate along the west side of Maryland Route 66 (Mapleville Road) northeast of the intersection of U.S. Route 40-A Maryland Route 66, consisting of 35.8062 acres of land, more or less, as more particularly described in the Resolution and the Annexation Agreement (the "**Property**"); and

WHEREAS, paragraph 3 of the Annexation Agreement entitled, "Senior Housing" and paragraph 6 of the Annexation Agreement entitled, "Chase Six Boulevard" contain certain requirements and conditions for the development of the Property that the Owners and Town now desire to amend as hereinafter set forth.

NOW, THEREFORE WITNESSETH, that for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable considerations, the sufficiency of which is hereby acknowledged, the parties hereto agree to amend the Annexation Agreement as follows:

FIRST: Paragraph 3 of the Annexation Agreement which reads as follows:

3. Senior Housing. In accordance with the limitations permitted to be imposed by a municipal corporation in an annexation agreement as set forth in Section 4.01 (c) (2) of Article 66B, Annotated Code of Maryland (also known as the "Rylyns amendment") the Owners shall provide for senior level housing in the form of single story duplexes (for example, as exists in the SouthPoint subdivision development in the City of Hagerstown) as part of the first site plan submitted to the Town for development of the Property.

IS HEREBY DELETED AND REPLACED WITH THE FOLLOWING:

3. INTENTIONALLY DELETED BY THIS AMENDMENT.

SECOND: Paragraph 6 of the Annexation Agreement which reads as follows

6. Chase Six Boulevard. The Owners shall be responsible to construct Chase Six

Boulevard (to include a completed intersection at Maryland Route 66). The Owners will bond the estimated cost of such construction upon recordation of the first final subdivision plat for the Property.

IS HEREBY DELETED AND REPLACED WITH THE FOLLOWING NEW PARAGRAPH 6:

6. Chase Six Boulevard. The Owners shall be responsible to construct Chase Six Boulevard (to include a completed intersection at Maryland Route 66). The Owners will bond the estimated cost of such construction upon issuance of the 26th building permit for the 53-lot Phase 3 of the Fletcher's Grove subdivision (known as "Dean North") being that portion of the Property located on the north side of Chase Six Boulevard. The Owners will complete the construction of Chase Six Boulevard (to include a completed intersection at Maryland Route 66) prior to the issuance of the first (1st) building permit for that later phase of the Fletcher's Grove subdivision known as "Dean South."

THIRD: In all other respects, the Annexation Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereunto caused this Amendment to be executed, and each individual executing this Amendment on behalf of a party acknowledges and warrants that said individual is duly authorized to execute this Amendment and to bind his principal to the provisions hereof.

WITNESS:

OWNERS:

Esther Marie Dean

Rachel E. Dean

By: Esther Marie Dean (SEAL)

RINGLEY, LLC, a Maryland limited liability company

Denia M. Oden

By: James A. Draper (SEAL)
James A. Draper,
Managing Member

Robert E. Courtney and Sheryl J. Courtney

James A. Draper
James A. Draper

By: Robert E. Courtney (SEAL)
Sheryl J. Courtney

8486 DEAN, LLC,
a Maryland limited liability company

Lina M Oden

By: James A. Draper (SEAL)
James A. Draper,
Managing Member

WITNESS/ATTEST:

TOWN:

MAYOR & COUNCIL OF BOONSBORO

Sarah Murto Campbell, Town Clerk

By: Howard W. Long, Mayor (SEAL)

West's Annotated Code of Maryland

Land Use (Refs & Annos)

Division I. Single-Jurisdiction Planning and Zoning [Titles 1-13] (Refs & Annos)

Title 4. Zoning (Refs & Annos)

Subtitle 1. Powers (Refs & Annos)

MD Code, Land Use, § 4-103

§ 4-103. Additional powers

Effective: July 1, 2013

Currentness

Additional conditions or limitations

(a) When zoning or rezoning land under this division, a legislative body may impose any additional conditions or limitations that the legislative body considers appropriate to improve or protect the general character and design of:

- (1) the land and improvements being zoned or rezoned; or
- (2) the surrounding or adjacent land and improvements.

Annexation agreement

(b) A municipal corporation may include in an annexation agreement conditions and limitations on the use of land and density of development otherwise allowed in the zoning district where the land is located.

Design approval

(c) When zoning or rezoning land under this division, to ensure conformity with the intent and purpose of this division and of the local jurisdiction's zoning law, a legislative body may retain the power to approve or disapprove:

- (1) the design of buildings, construction, landscaping, or other improvements; and
- (2) changes made or to be made on the land being zoned or rezoned.

Local law required

(d) The powers provided in this section shall apply only if the legislative body adopts a local law that includes:

- (1) enforcement procedures; and
- (2) requirements for adequate notice of:

(i) public hearings; and

(ii) conditions and limitations sought to be imposed.

Credits

Added by Acts 2012, c. 426, § 2, eff. Oct. 1, 2012. Amended by Acts 2013, c. 674, § 1, eff. July 1, 2013.

MD Code, Land Use, § 4-103, MD LAND USE § 4-103

Current through legislation effective May 15, 2018, from the 2018 Regular Session of the General Assembly

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