

# The Capital

## South County

### Court OK's senior homes in south county

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A ruling from the state's highest court could reinvigorate efforts to build a long-delayed senior apartment complex in south county.

Crandell Cove Inc. has been trying to build a 32-unit complex off of Franklin Manor Road since 2000.

Some nearby residents have opposed the project every step of the way because it's planned on environmentally sensitive land at the head of Deep Cove Creek.

That area is generally zoned for one house per acre. The 25-acre proposed project would create 32 units for up to 64 residents. Early design plans had a master bedroom, kitchen, dining and living areas, a den and screened porch in most of the units. Four of the units will have two master bedrooms to accommodate seniors who agree to share quarters.

Nearby residents also are concerned that allowing it to be built on residential land would set a precedent of converting land designed for single-family use to heavier use.

But the three-year legal battle has turned away from the merits of building the facility, toward the issue of whether county law permitted the Board of Appeals to extend the deadline for the project's completion.

The Court of Appeals unanimously held that the board does, noting that the county has issued more than 130 such "time variances" since 1995.

"We see no reason to disregard the long-standing practice in this case," Judge Dale S. Cathell wrote in an 18-page ruling.

"Glorious," said the Rev. Carl W. Rehling, president of the corporation that owns the property, when he heard about the ruling.

The property owners, who had put the 25 acres up for sale in the interim, were glad the top court went their way and hope to proceed with their original plan.

"We're very delighted to hear this, and we'll be adjusting our plans accordingly and hope to go ahead as we had planned," said the Rev. Rehling, who is a deacon at St. James' Episcopal Church in Lothian, and chairs the corporation that controls the property.

In May, the family of the late John Crandell donated the property to Crandell Cove Inc., which includes members of two south county Episcopal churches, Christ Church in West River and St. James' Church in Lothian, and the family.

Together they hoped to build the facility for seniors so they might be able to stay closer to home in South County.

John Butler, the lawyer who represented the residents who opposed the plan, said he was disappointed by the ruling, but he declined to talk about its specifics.

"It doesn't do much good to argue once you have an opinion from the highest court in the state," he said. "It is what it is."

Don Avery, former president of South Arundel Citizens for Responsible Development, which backed the lawsuit against the development, said the court's ruling basically declares that the zoning code can be circumvented.

"They said the code is basically a guideline not final law. They said the hearing officer and Board of Appeals can grant a variance or exception to any provision in the code - which they do regularly."

He said the organization takes a different view. "We always thought the term "shall" in the law does not allow wavering. A lot of people read that and say I can't do that. Others see that and say I'll hire a lawyer and we'll see."

One argument made by opponents in court was the use of the word "shall" in county zoning code, specifically regarding variances: "A variance granted under the provisions of this law shall become void"... indicated an intent to limit the power to vary the law. The court disagreed.

Mr. Avery noted if anyone else but the Crandell Cove group moves forward they will have to start the development application process from scratch, like the original plan did seven years ago.

The plan was controversial from the first.

The lot is 86 percent forested and all of it is in the Critical Area, as determined by the state, meaning it's subject to development restrictions. The project would clear 3.9 acres.

More than half of the site, which is split-zoned for residential and open space, is in a federal floodplain.

The county twisted its rules when it declared the project a nursing home. That made it possible for the project to proceed.

But even then it needed zoning variances because of the wetlands and federal flood plain that traverse much of the property.

Those variances came in February 2003 and upheld by the Board of Appeals in September of that year.

Because the project met with delays obtaining required county and state permits, it did not meet the time constraints required under the variances. So Crandell Cove applied for a variance extension, and it was granted in Dec. 2004 by county Hearing Officer Stephen LeGendre.

That was appealed to the Board of Appeals and then to the Circuit Court last year, by local residents who questioned whether the extension could be granted. Both the board and court said yes.

When the case was further appealed to the Maryland Court of Special Appeals, the Court of Appeals stepped in to hear the case.

The Rev. Rehling said this morning the board of Crandel Cove, Inc. will convene soon to decide the next step, which he thinks will be to proceed with their building plans.

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