

County Council Of Howard County, Maryland

2020 Legislative Session

Legislative Day No. 10

Resolution No. 107-2020

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION authorizing the execution of a First Amendment to a Development Rights and Responsibilities Agreement by and between Camilla Carroll and Philip D. Carroll and Howard County, Maryland in accordance Title 16, Subtitle 17 of the Howard County Code.

Introduced and read first time _____, 2020.

By order _____
Diane Schwartz Jones, Administrator

Read for a second time at a public hearing on _____, 2020.

By order _____
Diane Schwartz Jones, Administrator

This Resolution was read the third time and was Adopted___, Adopted with amendments___, Failed___, Withdrawn___, by the County Council on _____, 2020.

Certified By _____
Diane Schwartz Jones, Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS**, Sections 7-301, et. seq., of the Land Use Article of the Maryland
2 Annotated Code grants Howard County the authority to establish procedures and
3 requirements for the consideration and execution of Development Rights and
4 Responsibilities Agreements; and

5
6 **WHEREAS**, by passage of Council Resolution No. 103-2010, the County
7 Council approved a Development Rights and Responsibilities Agreement (the
8 “Agreement”) between Camilla Carroll and Philip D. Carroll (collectively, the
9 “Carrolls”) and Howard County; and

10
11 **WHEREAS**, per Section 9.2A of the Agreement, the Agreement will terminate
12 and be void on September 23, 2020, unless extended or terminated sooner; and

13
14 **WHEREAS**, Sections 16.1700 *et seq.* of the Howard County Code sets forth
15 procedures to amend previously executed Development Rights and Responsibilities
16 Agreements; and

17
18 **WHEREAS**, on or about March 23, 2020, the Carrolls petitioned the County
19 Executive to negotiate a First Amendment to Development Rights and Responsibilities
20 Agreement (the “First Amendment”), substantially in the form attached as Exhibit 1, and
21 the petition included key elements of the First Amendment; and

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23 **WHEREAS**, the County Executive reviewed the Petition and initiated the
24 negotiation process; and

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26 **WHEREAS**, the First Amendment extends the term of the Agreement for five
27 years until September 23, 2025; and

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29 **WHEREAS**, in several instances, the First Amendment also updates language in
30 sections 6.1, 6.2, 2.6, 2.7, 9.1, 9.6, 9.7, 9.10 and 9.14 of the Agreement to incorporate
31 references to the First Amendment; and

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WHEREAS, new sections 1.6, 2.6, and 2.7 are added by the First Amendment;

and

WHEREAS, a presubmission community meeting as required by Section 19.701(b) of the County Code was held on May 23, 2019; and

WHEREAS, at a public meeting held on July 2, 2020, the Planning Board determined that the First Amendment was consistent with PlanHoward2030, the County’s General Plan, and a copy of the Planning Board report is attached to the First Amendment; and

WHEREAS, a public hearing has been held before the County Council on this Resolution; and

WHEREAS, the criteria set forth in Title 16, Subtitle 17 of the Howard County Code have been met and the County Executive may execute the First Amendment to the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the County Council of Howard County, Maryland this ____ day of _____, 2020 that the First Amendment to Development Rights and Responsibilities Agreement, substantially in the form attached as Exhibit 1, having met the criteria set forth in Title 16, Subtitle 17 of the Howard County Code is hereby approved.

AND BE IT FURTHER RESOLVED, that the County Executive is hereby authorized to execute the First Amendment to Development Rights and Responsibilities Agreement in the name of and on behalf of the County.

**FIRST AMENDMENT TO
DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT (this "**Amendment**"), is made as of the ____ day of _____, 2020 (the "**Effective Date**"), by and among CAMILLA CARROLL and PHILIP D. CARROLL, individuals (collectively, "**Petitioner**"), and HOWARD COUNTY, MARYLAND, a body corporate and politic of the State of Maryland ("**Howard County**"). Petitioner and Howard County are hereinafter referred to collectively as the "**Parties**".

RECITALS

1. Subtitle 3 of Title 7 of the Land Use Article of the Annotated Code of Maryland (the "**DRRA Law**") grants Howard County the authority to establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements.

2. Subtitle 17 of Title 16 of the Howard County Code (the "**County Ordinance**") authorizes Howard County to amend previously executed Development Rights and Responsibilities Agreements.

3. The Parties hereto are parties to that certain Development Rights and Responsibilities Agreement dated September 23, 2010 and recorded among the Land Records of Howard County, Maryland (the "**Land Records**") in Liber 12722, folio 248 (the "**Existing DRRA**") regarding certain real property more particularly described and identified in the Existing DRRA.

4. Section 16.1701 of the County Ordinance provides the procedure for amending previously executed Development Rights and Responsibilities Agreements such as the Existing DRRA.

5. Additionally, Section 9.4 of the Existing DRRA provides that the Parties may amend the Existing DRRA "by mutual consent after Howard County holds a public hearing and complies with all applicable laws of the County Ordinance concerning amendment of a Development Rights and Responsibilities Agreement."

6. Section 9.2.A of the Existing DRRA provides that the Existing DRRA "shall terminate and be void on the tenth (10th) anniversary of the Effective Date of [the Existing DRRA], unless extended by an amendment to [the Existing DRRA] complying with all procedures required in [the Existing DRRA], the County Ordinance and Maryland Law"

7. The Parties desire to extend the term of the Existing DRRA for an additional

period of five (5) years.

8. This Amendment is intended to constitute an amendment to a Development Rights and Responsibilities Agreement as provided for in the DRRA Law and the County Ordinance.

9. On or about _____, 2020, Petitioner petitioned Howard County to enter into this Amendment.

10. On or about _____, 2020, Howard County reviewed this Amendment and determined to accept this Amendment and to initiate the process of considering an amendment to the Existing DRRA.

11. This Amendment was negotiated between Petitioner and the Howard County Executive.

12. A pre-submission community meeting regarding this Amendment was conducted in accordance with the requirements of the County Ordinance and Howard County law on May 23, 2019.

13. This Amendment was referred to the Howard County Planning Board (the "**Planning Board**") for an advisory determination of whether this Amendment is consistent with Howard County's general plan, PlanHoward 2030 (the "**General Plan**"). At a public meeting held on _____, 2020, the Planning Board determined that this Amendment was consistent with the General Plan. The recommendation of the Planning Board is attached hereto and incorporated herein by reference as **Exhibit A**.

14. On _____, 2020, the Howard County Council held a duly advertised public hearing on this Amendment in accordance with Howard County law, and approved this Amendment on _____, 2020 by Council Resolution _____.

NOW, THEREFORE, in consideration of the foregoing recitals, which are not merely prefatory but are hereby incorporated into and made a part of this Amendment, and the mutual covenants and agreements as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, Petitioner and Howard County hereby agree as follows:

ARTICLE I

AMENDMENT

1.1 Term. Section 9.2.A of the Existing DRRA is hereby deleted in its entirety

and is hereby replaced as follows:

“A. This Agreement shall constitute covenants running with the land and shall run with and bind the Property. This Agreement shall terminate and be void on September 23, 2025, unless extended by an amendment to this Agreement complying with all procedures required in this Agreement, the County Ordinance and Maryland Law or in accordance with Section 8.4 above or unless terminated by agreement of the Parties or as permitted by law.”

1.2 Nature, Survival, and Transfer of Obligations. The Parties agree that this Amendment shall run with the land and be binding upon and inure to the benefit of Petitioner and their respective heirs, successors and assigns, and upon any and all successor owners of record of all or any portion of the Property (except owners of an individual lot improved as part of the Project and pursuant to a validly issued building permit). To assure that all such successors, assigns, and successor owners have notice of this Amendment and the obligations created by it, Petitioner agrees that they shall:

A. Have this Amendment recorded among the Land Records within twenty (20) days after the Effective Date of this Amendment; and

B. Incorporate, by reference, this Amendment into any and all real estate sales contracts entered into after the Effective Date of this Amendment for the sale of all or any portion of the Property; and

C. Prior to the transfer of all or any portion of the Property (except the transfer of an individual lot solely for use as a private residence), or any equitable interest therein, require the transferee to execute an enforceable written agreement, in a form reasonably satisfactory to Howard County, binding transferee to this Amendment.

1.3 Binding Upon Successors and Assigns of Howard County. Howard County agrees that, to the extent permitted by law, all obligations assumed by it under this Amendment shall be binding on it, its agencies, employees, governmental units, the Planning Board and its and their respective successors and assigns.

1.4 Regulation and Master Plan Consistency. Howard County has determined that this Amendment is consistent with the General Plan. The Planning Board has determined that this Amendment is consistent with the General Plan.

1.5 Public Health, Safety and Welfare. Howard County has determined that the terms and provisions of this Amendment will ensure that the public health, safety and welfare of the residents of Howard County are protected.

1.6 Ratification. The Parties hereby ratify and confirm all of the terms and

provisions of the Existing DRRA and acknowledge and agree that all of the terms and provisions of the Existing DRRA remain in full force and effect, except as otherwise expressly and specifically modified and amended by the terms and provisions of this Amendment. In the event of any conflict between the terms and provisions of the Existing DRRA, and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall control.

ARTICLE II
MISCELLANEOUS

2.1 Time of Essence. Time is of the essence in the performance of all terms and provisions of this Amendment.

2.2 Authority to Execute. Howard County and Petitioner hereby acknowledge and agree that all required notices, meetings, and hearings have been properly given and held by Howard County with respect to the approval of this Amendment and agree not to challenge this Amendment or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. Howard County hereby warrants and represents to Petitioner that the persons executing this Amendment on its behalf have been properly authorized to do so.

2.3 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Maryland.

2.4 Severability. In case any one or more of the provisions contained in this Amendment shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Amendment, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Amendment.

2.5 No Third Party Beneficiary Status. The Parties specifically agree that this Amendment is not intended to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations under this Amendment.

2.6 Recitals. The Parties acknowledge and agree that the recitals to this Amendment are true and correct, and such recitals are incorporated herein by reference.

2.7 Defined Terms. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings given such terms in the Existing DRRA.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have hereunto set their hands under seal on the date first above written.

WITNESS/ ATTEST:

Camilla Carroll (SEAL)

STATE OF _____, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this ____ day of _____, 2020, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared CAMILLA CARROLL, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

[SEAL]

[Print Name of Notary]

My Commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

WITNESS/ ATTEST:

Philip D. Carroll (SEAL)

STATE OF _____, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this ____ day of _____, 2020, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared PHILIP D. CARROLL, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

[SEAL]

[Print Name of Notary]

My Commission expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

AGREED and APPROVED:

HOWARD COUNTY, MARYLAND

ATTEST:

Lonnie R. Robbins
Chief Administrative Officer

BY: _____(SEAL)
Calvin Ball
Howard County Executive

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

this _____ day of _____ 2020.

Gary W. Kuc
County Solicitor

STATE OF MARYLAND, _____ COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2020, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Calvin Ball, the County Executive for Howard County, Maryland, who acknowledged the within Amendment to be the act of the County and that he executed the foregoing Amendment for the purposes therein contained by signing in my presence the name of Howard County, Maryland as County Executive.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

ATTORNEYS' CERTIFICATION

THIS IS TO CERTIFY that the undersigned are members, in good standing, of the Bar of the Court of Appeals of Maryland, and that the within instrument was prepared by the undersigned or under their supervision.

Upon Recordation Please Return To:

Sang W. Oh, Esq.
Talkin & Oh, LLP
5100 Dorsey Hall Drive
Ellicott City, Maryland 21042

EXHIBIT A

PLANNING BOARD RECOMMENDATION

See attached.