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| IN RE: <b>DEVELOPMENT PLAN HEARING</b>             | * | BEFORE THE            |
| SW/S Dance Mill Rd., S Blenheim Rd.                |   |                       |
| <b>(Brighton Court – fka Kassolis Prop.)</b>       | * | ZONING COMMISSIONER   |
| 10 <sup>th</sup> Election District                 |   |                       |
| 3 <sup>rd</sup> Council District                   | * | FOR                   |
|  | * | BALTIMORE COUNTY      |
| James D. Kassolis, et ux, <i>Owners – (Lot 11)</i> |   | *                     |
| Brighton Court, LLC, <i>Developer and</i>          | * |                       |
| <i>Owner - (Lots 1 through 10)</i>                 |   | <b>Case No. X-429</b> |

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**AMENDED DEVELOPMENT PLAN ORDER**

This matter returns before this Hearing Officer/Zoning Commissioner for continued proceedings on a request for a material amendment to the Development Plan previously approved on February 28, 2007. By way of background, this matter initially came before the undersigned Hearing Officer on January 11, 2007 in accordance with the development regulations codified in the Baltimore County Code (B.C.C.) Article 32, Title 4. An Opinion and Order approving the development plan was issued for the residential development of the subject property with 11 single-family detached dwelling units.<sup>1</sup> Subsequently, the Developer decided to add entrance monument signage on either side of Brighton View Court at Dance Mill Road and requested approval of that addition via a request to the Development Review Committee (DRC) for a refinement to the approved plan. The DRC, however, aptly noted the approved subdivision plan contained a “General Note” stating in pertinent part, “*No signs are proposed for this project*”. The Committee thus concluded that the addition of monument signs at the entrance way constituted a “Material Change” to the approved Development Plan and denied the request for a refinement. B.C.C. Section 32-4-262 addresses amendments to development plans and

requires material amendments to be reviewed in the same manner as the original plan and for compliance with all current law and regulations including the development regulations. The DRC, on October 20, 2008, directed the Developer to file a Redlined Amended Development Plan adding the sign detail and proposed street lighting, post the property and proceed to another public hearing before the Hearing Officer in accordance with B.C.C. Sections 32-4-227 et seq. That having been stated, this Opinion and Order will take into consideration the new evidence and testimony received at the January 29, 2009 hearing, the two-paged, redlined development plan submitted and accepted into evidence and marked as Developer's Exhibit 1 (the "Redlined Amended Plan").

Appearing at the hearing on behalf of the Developer were Alan Klatsky; Richard E. Matz, Professional Engineer with Colbert, Matz & Rosenfelt, Inc., and Lawrence E. Schmidt, Esquire, of Gildea & Schmidt, LLC, attorney for the Owner/Developer. A number of representatives of the various Baltimore County agencies who reviewed the Redlined Amended Plan attended the hearing, including the following individuals from the Department of Permits and Development Management (DPDM): Colleen Kelly, Project Manager; Jeffrey Perlow, Office of Zoning Review; Dennis A. Kennedy, Development Plans Review; and Ron Goodwin, Land Acquisition. Also appearing on behalf of the County were Lynn Lanham, Office of Planning; David Lykens, Department of Environmental Protection and Resource Management (DEPRM), and Bruce Gill, Department of Recreation and Parks (R&P).

The issues presented in this case were controversial and generated significant public interest. Testifying in opposition were Dr. Mark Ellerkmann, President, Dance Mill Road Community Association; neighbors that reside on Dance Mill Road opposite from the entrance

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<sup>1</sup> To the extent applicable, the findings and conclusions set forth in prior Order X-429 are adopted by reference and incorporated herein.

of Brighton View Court, Michael Murdzak, Robert Bailey and Michael Burns. Also appearing were Iona Dorn and Fotis Zografos, residents of the community. The Protestants' opinions are also reflected in a series of letters received from the Greater Jacksonville Association and nearby residents and collectively marked and admitted into evidence as Protestants' Exhibits 2, 3, 4 and 5.

Mr. Matz, familiar with the site, described the sign detail and explained where the proposed entrance monuments were to be located. As illustrated on Page 2 of Exhibit 1, each entry feature sign would be constructed with two (2) six foot high stone monuments separated by wrought-iron fencing resulting in an overall length of approximately 16 feet. The sign on the north side of Brighton View Court is not within the development tract. The sign on the south side is located next to or in the County's 16-foot revertible slope easement that parallels Dance Mill Road and also within the conservancy area. Suffice it to say, the proposed scale of the improvements (a total of 32 feet for both sides) and their locations are objected to by certain members of the community. In the opinion of these residents, the proposed signage is out of character for the locale and inappropriate.

The clear tenor of the testimony and individual remarks demonstrated the need for a continuance of the hearing in order to provide the parties with the opportunity to attempt to resolve the issues between them. The central point at issue pertains to the adjacent neighbors and the community's desire to protect and maintain the area's rural character. These concerns were discussed in detail in the prior Order at Pages 8 through 11. To allow the entrance monument signage as proposed would not be compatible with the rural character of the locale. The signage as proposed on the north side of the entrance way would be in violation of B.C.Z.R. Sections 450.4.2, 450.6.1 and 102.5. The sign on the south side, in the conservancy area, must

comply with B.C.Z.R. Section 1A03.5G. The Comprehensive Manual of Development Policies (CMDP) states in this regard “*the conservancy and building areas should be distributed to safeguard the roadside character of rural areas and places of special significance*”.

As noted, in response to community opposition and the unresolved comments from County reviewing agencies, the hearing was continued allowing time for the parties to meet and confer on numerous occasions. I commend the parties’ for their efforts. An agreement now having been reached by and between the Developer, County and the community, the Hearing Officer’s Opinion and Development Plan Order, dated and issued February 28, 2007, will be amended to add the essential terms of that agreement set out in the Dance Mill Road Community Association’s correspondence, dated April 1, 2009 (Protestants’ Exhibit 6) and contingent further upon the Developer obtaining written approval from the Director of Public Works for the entrance monument that is to be erected on the south side of Brighton View Court within the revertible slope easement. This amendment is consistent and compatible with the existing subdivision. In this regard, the revised signage package constitutes a refinement to the development plan, pursuant to Section 32-4-106(b)(2) of the B.C.C. and no longer considered a material amendment as contemplated in Council Bill 24-06.

In conclusion, pursuant to the zoning and development regulations of Baltimore County as contained in Article 32, Title [4] of the B.C.C. and for the reasons set forth herein, the relief requested to approve the entrance monument signage described on the Material Change Plan shall be denied; and an amendment to the Redlined Development Plan to allow the two (2) scaled down non-illuminated entry features that contain no lettering, numbering or fencing shall be granted. The parties agree that the revised plan should be approved.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County, this 28<sup>th</sup> day of April 2009, that the amended relief to approve the Redlined Amended Development Plan, for **BRIGHTON COURT**, pursuant to Section 1B01.3.A.7(b) of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow two (2) entrance monuments not to exceed 36" in height, width and length at the locations shown on Page 1 of the Redlined Amended Development Plan, identified herein as Developer's Exhibit 1, be and is hereby APPROVED; subject to the following conditions:

1. Except as specifically modified herein, the terms and conditions of the development plan approval previously granted in the 16-page Order, dated February 28, 2007, shall remain in full force and effect and as is appropriate, are incorporated herein.
2. The Developer, shall within sixty (60) days of the issuance of this Order submit a revised Landscape Plan to Avery Harden, the County's landscape architect, detailing the flagstone entrance monuments for Brighton View Court *not to exceed the dimensions of 36" high x 36" wide x 36" long* for each of the two (2) monuments together with amenity landscaping and planting that will surround them.
3. Written permission to erect the entrance monument on the south side of Brighton View Court located within the revertible slope easement area shall be obtained from the Director of Public Works prior to the commencement of construction.
4. Prior to construction of the signage, Developer, through its counsel, shall record a "Declaration of Restrictive Covenants" among the Land Records of Baltimore County setting forth the size and essentials of the entrance way monument agreement, including the following:
  - The 36" monuments as described herein above shall be covered (faced) with authentic flagstone.
  - Monuments are not to be illuminated in any way.
  - Monuments are to include landscaping that will include shrubs and/or trees/plants and mulch. There shall be no additional artificial/man-made structures.

- Monuments are not to have any signage (no lettering, numbering, insignias, plaques, etc.)
- The restrictions contained herein shall be incorporated as part of the covenants to be conveyed to the Homeowners Association for the Brighton Court community and any breach of the restrictions imposed herein related to the monuments may be enforced by the Dance Mill Road Association.
- Prestige Development will be responsible for the maintenance and upkeep of the monuments and surrounding landscape until Brighton Court Homeowners Association is established. Once established, the responsibilities for maintenance shall be with said association.

Any appeal of this Order shall be taken in accordance with Baltimore County Code, Section 32-4-281.

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SIGNED  
WILLIAM J. WISEMAN, III  
Zoning Commissioner/Hearing Officer  
for Baltimore County