

IN RE: PLANNED UNIT DEVELOPMENT	*	BEFORE THE ZONING
N & S/S of Yorkway,		
N of Shipway	*	COMMISSIONER
(Yorkway Redevelopment)	*	OF
12 th Election District	*	BALTIMORE COUNTY
7 th Council District		
	*	
Yorkway, LLC		
<i>Applicant/Developer</i>	*	Case No. XII-153
* * * * *		

HEARING OFFICER’S REVIEW AND APPROVAL ORDER

I. Procedural History and Facts

This matter comes before the Hearing Officer/Zoning Commissioner, pursuant to Section 32-4-246 of the Baltimore County Code (B.C.C.), for review of the Baltimore County Planning Board’s decision to approve a general development planned unit development (PUD), known as Yorkway Redevelopment. The approved Yorkway Redevelopment PUD Concept Plan was prepared by the civil engineering and land planning firm of Morris & Ritchie Associates, Inc. and has been marked as Developer’s Exhibit 1. This plan reflects Applicant Yorkway, LLC’s proposal to develop sixty-six (66) single-family detached dwellings. The subject property is on 12.38 total acres (vacant) of D.R.5.5 zoned property consisting of four (4) strips of land located along Yorkway and Fairway Roads (formerly York Park Apartments) in the Dundalk area of the County.

This project is being reviewed under the optional Planned Unit Development process, as permitted by B.C.C. Section 32-4-241, *et seq.* Pursuant to B.C.C. Section 32-4-242, the concept plan for this project was authorized for review as a PUD by Baltimore County Council Resolution 9-09.

Thereafter, the Applicant came before the County for the required informational/pre-concept meeting on March 3, 2009. Applicant then prepared and submitted a concept plan and related materials to Baltimore County for review in accordance with B.C.C. Section 32-4-243. A Concept Plan Conference (CPC) was held on April 6, 2009, and Applicant attended a Community Input Meeting (CIM) on April 27, 2009, as required by B.C.C. Sections 32-4-243 and 32-4-217. In response to the agency comments received at the CPC and the comments of the community generated at the CIM, all of which are included in the file presented to me for review, the Applicant prepared and submitted the revised PUD Concept Plan, dated May 7, 2009, 2009, for approval. This submittal also included a revised PUD Pattern Book (Developer's Exhibit No. 2) and other materials.

Having received the revised PUD Concept Plan and PUD Pattern Book, in accordance with B.C.C. Sections 32-4-244, the Office of Planning prepared a lengthy report to the Planning Board, dated May 21, 2009, outlining the history of the project, discussing the review of the plan by the County agencies and addressing the statutory standards by which the project would be assessed. Based on its extensive review of the project, the Office of Planning recommended approval of the Yorkway Redevelopment PUD Concept Plan and the requested Modifications of Standards, with several recommended conditions. The staff report was then provided to the Planning Board, at an introductory meeting on May 21, 2009.

At the Planning Board meeting on June 4, 2009, the Applicant's representatives made a presentation to the Board introducing the PUD Concept Plan.¹ At the meeting on June 4th, David Gildea, Esquire, with Gildea & Schmidt, LLC attorney for the Applicant, presented the project, the PUD Concept Plan, PUD Pattern Book, and other materials to demonstrate to the Planning

¹ For the Introduction on May 21, 2009, the Public Hearing on June 4, 2009 and the Vote on June 18, 2009 voice recordings are included in the Planning Board's file and have been made part of the record. The Applicant engaged a court reporter to attend each of the Planning Board meetings.

Board that the project met each of the requirements for a PUD under the Baltimore County Code and the Baltimore County Zoning Regulations (B.C.Z.R.). During the Applicant's presentation, several Planning Board members recognized the extensive community outreach that had been undertaken by the Applicant

During the public hearing, several members of the community voiced their approval of the PUD proposal, including Amy Menzer on behalf of Dundalk Renaissance Council and Glen Shaffer on behalf of the Old Dundalk Neighborhood Association (ODNA). Each of these groups recommended approval of the PUD and commended the Applicant for its extensive outreach and willingness to consult with the community. Ms. Menzer spoke about the positive change the new development would bring to the community in terms of reinvestment in an older neighborhood and providing homes that existing members of the community could move into as an upgrade while maintaining community ties. Mr. Shaffer, on behalf of ODNA, approved of the project but also sought several conditions, including that the parallel parking spaces agreed upon at the CIM be incorporated into the PUD and that that no parking be permitted on the unpaved front lawns of the new homes. The Planning Board addressed both of these issues in its written decision. It required that a declaration be recorded that prevents parking on the unpaved front lawn area of the homes, and it also encouraged the Department of Recreation and Parks to assist the Applicant in pursuing such parking plan.

At the Planning Board meeting scheduled for the final vote on June 18, 2009, the Planning Board allowed additional testimony to be taken. Christine Ames, who lives across from the 2600 block of Yorkway, expressed a desire to see rear load garages as opposed to the front loaded garages. She was concerned that front driveways would remove needed parking spaces and create safety issues with cars backing out into the existing roadways. After accepting her

letter into the record at the June 18, 2009 meeting, the Planning Board called for a vote. The Planning Board voted unanimously to approve the Yorkway Redevelopment PUD Concept Plan and each of the requested Modifications of Standards. On June 30, 2009, the Secretary to the Baltimore County Planning Board, Arnold F. "Pat" Keller, forwarded for my review the Baltimore County Planning Board's Planned Unit Development Approval (the "Approval"), signed by the Chairman of the Planning Board on June 26, 2009, which evidences the unanimous Planning Board approval of the PUD Concept Plan. A copy of the Order is attached hereto as Exhibit A.

II. Standard of Review

Pursuant to B.C.C. Section 32-4-245, the Planning Board may approve a Planned Unit Development Concept Plan if it makes the following findings:

1. The proposed development meets the intent, purpose, conditions, and standards of B.C.C. Section 32-4-245, and any modifications of standards are necessary and provide a community benefit;
2. The proposed development will conform with B.C.Z.R. Section 502.1.A, B, C, D, E, and F and will constitute good design, use and layout of the proposed site;
3. There is a reasonable expectation that the proposed development will be developed to the full extent of the Concept Plan;
4. The development is in compliance with B.C.Z.R. Section 430; and,
5. The Concept Plan is in conformance with the goals, objectives, and recommendations of the Master Plan or area plans.

According to B.C.C. Section 32-4-246, the Hearing Officer's role in the review and approval of a PUD Concept Plan is to review the plan as approved by the Planning Board and,

absent a finding that the decision of the Planning Board constitutes an abuse of discretion or is unsupported by the documentation and evidence presented to the Planning Board, approve the plan. Abuse of discretion occurs when the discretion used by the deciding body is “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Schade v. Board of Elections*, 401 Md. 1, 34, 930 A.2d 304, 323-24 (2007). In *Touzeau v. Deffinbaugh*, the Court of Appeals stated that abuse occurs when the adjudicating body “exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law.” 394 Md. 654, 669, 907 A.2d 807, 816 (2006) (quoting *Jenkins v. State*, 375 Md. 284, 295-96, 825 A.2d 1008, 1015 (2003)). Abuse of discretion has also been defined by the Maryland Court of Appeals as occurring where no reasonable person would take the view adopted by the body with original jurisdiction or when the decision maker acts without reference to any guiding rules or principles. See *In re Yve S.*, 373 Md. 551, 583, 819 A.2d 1030, 1049 (2003). Therefore, the question is not whether the reviewing body would have reached the same conclusion, but whether the conclusion reached was manifestly incorrect. See *Wilson-X v. Department of Human Resources*, 403 Md. 667, 677, 944 A.2d 509, 515 (2008).

III. Review of Planning Board’s Approval

In reviewing the Planning Board’s decision to approve the Yorkway Redevelopment PUD Concept Plan, I have before me Mr. Keller’s referral letter, dated June 26, 2009 and received June 30, 2009, which included the Approval, and Permits and Development Management’s entire file in Case No. XII-153. I note at the outset that the file provided to me contains a wealth of information. The file includes the usual County documentation involved in processing a PUD Concept Plan, such as the PUD Concept Plan as originally filed, comments from each of the reviewing County agencies, the revised Concept Plan considered and approved

by the Planning Board, and the PUD Pattern Book. These last two items provide a description of the existing condition of the property; the project vision of the development of the property; statements regarding compatibility and the anticipated effects of the development on the surrounding neighborhood; and several illustrative exhibits, including aerial photographs, proposed amenities, conceptual rendered perspectives, lighting and landscaping details, architectural elevations, and related items.

Pursuant to the authority granted by B.C.C. Section 32-4-246, after a thorough review of evidence in this matter and upon consideration of the Order of the Planning Board, I find that the Planning Board clearly understood the standard upon which its decision was to be based and made the proper findings of fact. The statutory requirements for approval could not have been stated more clearly than they were by the Office of Planning in its report, by the Applicant in presentation, and additional submittals, and, most importantly, by the Planning Board in its Approval Order. The Planning Board has clearly demonstrated that it understands its role and authority under the relevant Code provisions to approve a PUD.

A. Intent, purpose, conditions and Standards of Section 32-4-245

With regard to the required findings, the Planning Board addressed each of the statutory requirements and included a thorough explanation of the reasoning behind its findings and references to evidence upon which it relied in making such findings. The Planning Board must find that the proposed development meets the intent, purpose, conditions and standards of B.C.C. Section 32-4-245. In exploring this, the Planning Board's Order states:

The Board finds that the proposed development meets the intent, purpose, conditions, and standards of Part IV of Subtitle 2 of Title 4 of Article 32 of the Code. The testimony and record before this Board contain evidence that the instant PUD will achieve a development of substantially higher quality than a conventional development would achieve by providing single-family dwellings, where it would otherwise be economically unfeasible to do so. This will increase

the housing type diversity of the neighborhood and help to encourage investment in Dundalk.

There is ample evidence to support the Planning Board’s finding that the PUD met the intents, purposes, conditions and standards of the PUD regulations. The development will be single-family dwellings with front brick facades in a neighborhood which contains mainly attached single-family homes and semi-detached homes. Thereby, the development, while adding more single-family detached dwellings, will tie into the neighborhood with the architectural elements like the brick façades. Furthermore, the homes, on average, are larger than the existing homes in the neighborhood, which will increase housing choice and make the area appealing to those who would consider only detached homes.

As is permitted by B.C.C. Section 32-4-245(c)(3), the Applicant seeks to modify certain development standards as stated both in the submitted PUD Pattern Book, Concept Plan. According to B.C.C. Section 32-4-245(c)(3), the Planning Board may approve the modifications if they are necessary to achieve the intent and purpose of Section 32-4-245 and provide a community benefit. These Modifications of Standards were restated and approved pursuant to the Planning Board’s Order. The proposed Modifications of Standards included changes to setbacks and open space requirements. Specifically, Applicant requested the following Modifications of Standards:

MOD #	STANDARD	PERMITTED/ REQUIRED	PROPOSED MINIMUM	Lot Numbers
1	Permit a side building face as close as 10’ to an adjacent side building face in lieu of the 20’ minimum setback in a DR 5.5 zone (BCZR §1B01.2.C.1.b)	20’	10’	1-66

MOD #	STANDARD	PERMITTED/ REQUIRED	PROPOSED MINIMUM	Lot Numbers
2	Permit a side building face as close as 2' to an adjacent public street right-of-way in lieu of the 15' minimum setback in a DR 5.5 zone (BCZR § 1B01.2.C.1.b)	15'	2'	1, 18, 19, 38, 39, 45, 46, 66
3	Permit a side building face as close to 4' to paving of a private road in lieu of the 25' minimum setback in a D.R. 5.5 zone (BCZR § 1B01.2.C.1.b)	25'	4'	1, 38, 39, 45
4	Permit a side building face as close as 2' to an adjacent tract boundary in lieu of the 15' minimum setback in a DR 5.5 zone (BCZR § 1B01.2.C.1.b)	15'	2'	1, 18, 19, 38, 39, 45, 46, 66
5	Provide 0 SF per dwelling unit, open space fee shall be determined at the discretion of the Director of the Department of Recreation and Parks prior to approval of the Development Plan.	66,000 SF	0 SF	N/A
6	Provide a 17' setback from front building face to public street right-of-way or property line in lieu of the required 25' minimum in DR 5.5 zone (BCZR § 1B01.2.C.1.b)	25'	17'	19, 46
7	Provide a 20' setback from front building face to public street right-of-way or property line in lieu of the required 25' minimum in a DR 5.5 zone (BCZR§ 1B01.2.C.1.b)	25'	20'	1-18, 20-45, 47-66
8	Provide a 21' setback from rear building face to public street right-of-way or property line in lieu of the required 30' minimum in a DR 5.5 zone (BCZR§ 1B01.2.C.1.b)	30'	21'	18, 46

In evaluating the Modifications the Order states that, “[t]he Board finds that the requested Modification of Standards are necessary to achieve the intent and purpose of BCC Sections 32-4-245 and provide a community benefit.” The evidence in the record supports this finding as the Planning Staff Report states on page 11:

The Office of Planning recommends that the Modifications of Standards requested...are in the public interest in order to accommodate a best use of the subject property in keeping with the community conservation concerns of the Council and the Master Plan 2010. The requested modifications to the setback standards allows a redevelopment design that takes positive advantage of the features particular to this site while providing the type of new housing opportunity that this well established community has indicated as being a positive development within their neighborhood.

As the record makes clear, the requested Modifications of Standards are necessary to allow for the creation of this single-family detached dwelling community. Strict adherence to the requirements of the underlying zoning classification would not allow for a developer to propose and build this type of product at this location. In offering single-family homes on the site, it was necessary to allow the homes to be closer together in order to offer what the Office of Planning indicated was a desirable housing type for this area. The modifications permit the proposed development to have a tangible impact on the community through its substantial investment and the investment of the future homeowners. Consequently, given the evidence in the record, it was not an abuse of discretion for the Planning Board to find compliance with the intent, purpose, conditions, and standards of Section 32-4-245.

B. Section 502.1.A-F of B.C.Z.R.

The Planning Board next considered B.C.Z.R. Section 502.1.A through F, finding for each section that the Applicant met the applicable standard. In evaluating B.C.Z.R. Section 502.1.A I find that the Planning Board did not abuse its discretion when determining that the proposed development conformed to the standards therein. The Approval states:

The Board finds that the proposed development will not be detrimental to the health, safety or general welfare of the locality involved (BCZR Section 502.1.A). The Board is satisfied that the modification of standards, coupled with the regulatory standards for construction of the detached single-family dwellings, will not have a detrimental effect on the locality.

The Yorkway Redevelopment has been designed and engineered to minimize potential impacts to the surrounding community and to the public facilities that provide them service. The site is zoned D.R. 5.5, recently downzoned in the 2008 Comprehensive Zoning Map Process (“CZMP”) from the more intense D.R. 10.5. The project will infuse sixty-six (66) new housing units into the existing neighborhood, a significant decrease in density from the prior use. This development is not proposing any new public or private roads. The previous use on the site was the York Park Apartments, and the redevelopment of this site into single-family houses will generate less traffic than the rental units, enhance the community through home ownership, and provide relief from the nuisance and criminal complaints the apartment buildings generated.

This finding by the Planning Board is supported by the evidence in the record and that cited in the Order. Among other evidence, the previous York Park Apartments contained 224 apartments on the same site that will now contain sixty-six (66) single-family detached units. Additionally, the proposal replaces apartments with single-family units, which can enhance investment in a community due to increased levels of home ownership. In consideration of the Order and the record before me, I am convinced that the Planning Board’s finding on 502.1.A was not an abuse of its discretion.

Moreover, the Planning Board did not abuse its discretion when finding that the proposed development conformed to B.C.Z.R. Section 502.1.B. The Planning Board states in its Approval:

The Board finds that the PUD will not tend to create congestion in roads, streets or alleys therein (B.C.Z.R. Section 502.1.B). The redevelopment of this site will not impact the traffic patterns for the area as the proposed Yorkway Redevelopment will utilize the existing road network. According to a traffic analysis performed by the Traffic Group, the prior rental apartment units placed 1,500 average trips per day on the area streets. The proposed sixty-six (66) single-family residential units will contribute 709 trips per day; therefore, the proposed use will actually reduce the number of cars on the area streets by one half. Moreover, there are no existing problems as Baltimore County has confirmed the proposed site is not within a Traffic Deficient Area. As previously indicated, the

development is not proposing any new public or private roads. The redevelopment will not have a negative impact on traffic. (Emphasis Added)

This finding is supported by evidence contained in the record, which evidence appears to be uncontroverted. *See* Traffic Impact Analysis/written submittal made by Mr. John W. Guckert, PTP, President, The Traffic Group. Therefore, the Planning Board's finding regarding B.C.Z.R. Section 502.1.B cannot be described as manifestly incorrect.

The Planning Board did not abuse its discretion when finding that the proposed development conformed to B.C.Z.R. 502.1.C. The Planning Board finds in its Approval:

The Board finds that the PUD will not tend to create a potential hazard from fire, panic or other danger. (BCZR Section 502.1.C). The testimony and evidence is not disputed that the dwellings will be constructed in accordance with all applicable building and fire codes and regulations. The development will allow for access of emergency vehicles and the building materials will meet required fire resistant standards. The overall design of the development will tend to improve the public safety of the locality.

The Yorkway Redevelopment will have no adverse impacts on police or fire protection. The previous use was a multi-family rental complex that drew a monumental amount of police resources (nearly 3,000 police calls in its final full year of existence). These rental units were not well supervised or maintained by their owners. The removal of these rental units by the introduction of single-family residential homes significantly reduces the strain on the local police district. By reducing the number of police calls to the area, Yorkway Redevelopment will have a positive impact on the surrounding community. Moreover, there will be no impact on the fire protection resources of Baltimore County because the proposed residential homes will meet all applicable building and fire codes. The network of streets and alleyways are also designed to Baltimore County standards for safety. As a result, there will be no negative impact to the police and fire protection services from this development.

This finding is further supported by the evidence in the record that there were no negative comments from the fire department regarding the proposed homes, their locations or site design. Likewise, the previous development's burden on the local police has been well documented, and there is no evidence that the new, single-family home development will create similar or

additional hazards. Given this evidence and that cited by the Planning Board, the finding on B.C.Z.R. Section 502.1.C do not constitute an abuse of its discretion.

Additionally, the Planning Board did not abuse its discretion in finding that the proposed development conformed to B.C.Z.R. Section 502.1.D. The Approval states:

The Board finds that the PUD will not tend to overcrowd land and cause undue concentration of population. (BCZR Section 502.1.D). As previously indicated, the property was downzoned in the 2008 CZMP from the more intense D.R. 10.5 zone to D.R. 5.5. The community expressed its support for the proposed 66 units of detached single-family dwellings. The proposed density is less than that permitted by the underlying zoning classification, but the type of housing product desired by the community takes up more space. There are 66 single-family homes proposed, a vast improvement over the former 224 apartment units previously on the site.

In supporting this finding it relied upon, among other evidence, the fact that previous development on the same site contained nearly four times as many units as the current proposal. If a much more intense development could exist on the same site, it is logical to conclude that a less intense development would also not overcrowd the land. Therefore, the down zoning to D.R. 5.5, and the greatly reduced density associated therewith, supports the Planning Board's finding, which I conclude was not an abuse of discretion.

The Planning Board did not abuse its discretion when finding that the proposed development conformed to B.C.Z.R. Section 502.1.E. The Planning Board Approval states:

The Board finds that the PUD will not tend to interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements. (BCZR Section 502.1.E).

Based on the projections required under Baltimore County's adequate public facilities regulations for schools, this development will have no negative impact to the public school system. The projected number of pupils generated by this development will not place any of the local schools over their State Rated Capacity (SRC).

There are no anticipated negative impacts to the utility systems from this development because the site was previously home to a much larger and more significant development. The proposed Yorkway Redevelopment will utilize the

existing water and sanitary sewer in Yorkway Road. The reduction in the number of residential units, 224 units in the York Park Apartments compared to 66 in the PUD, represents a decrease in demand on the water and sanitary systems. Therefore, no adverse impacts on the existing utilities are expected from the Yorkway Redevelopment PUD.

The development will consist of fewer units than the prior development. It is anticipated that the single-family development will have a decreased impact on public transportation services based upon the fact that there are less residents. No new public or private roads are proposed as part of this redevelopment, and the proposal decreases the amount of traffic, in comparison to the previous development, by fifty-four percent (54%).

Additionally, the development includes a plan to add to the stock of public parking. This is shown in the PUD Pattern Book as adding a significant number of parallel parking spaces, which should ameliorate any impact from parking lost due to the driveway curb cuts.

The Yorkway Redevelopment should have no impact on the existing library system. As previously stated, there were far more units in the previous development. The proposed single-family homes should not tax the library resources in the area. The library resources are anticipated to be more than adequate to serve the proposed community.

It is further anticipated that the proposed development will have no adverse impact on the existing community centers. The prior development had 224 apartment units while Yorkway Redevelopment proposes 66 single-family homes. The proposed development will significantly reduce the impact from this site on the surrounding community center infrastructure and the community centers are anticipated to be more than adequate to serve the proposed community. There will be no negative impacts to the area's Community Centers.

The evidence cited by the Planning Board demonstrates that the PUD Applicant has met its standard under this section. Given the above restated evidence, and no convincing evidence to rebut it, the finding of the Planning Board did not constitute an abuse of discretion.

Lastly, in evaluating B.C.Z.R. Section 502.1.F, the Planning Board did not abuse its discretion when finding that the proposed development was in conformance with this Section.

The Planning Board found:

The Board finds that the PUD will not tend to interfere with adequate light and air. (BCZR Section 502.1.F). The previous use on the site consisted of attached multi-family rental buildings. The height and orientation of the proposed detached

single-family dwellings will not impact anyone in the locality's use and enjoyment of light and air. The structures will not be as tall as the prior development on the site and will not unduly encroach upon adjoining properties.

Yorkway Redevelopment is an in-fill project and seamlessly works into the neighborhood. The current neighborhood lacks a uniform architectural theme or pattern due to the age and mixture of home types. The architectural design of this proposed development will adhere to Baltimore County Design Guidelines and will be approved through the PUD process, requiring a higher level of architectural design.

This finding is not manifestly incorrect given the above cited evidence that shows this will be a reduced development from the previous one in terms of density and buildings on the property. Also, there was not convincing evidence introduced in the record to demonstrate that light and air would be negatively affected. As a result, I find that the Planning Board's decision regarding B.C.Z.R. Section 502.1.F was not an abuse of its discretion.

C. Expectation of Development

As is required pursuant to B.C.C. Section 32-4-245(d)(3) the Planning Board must also make a finding regarding the expectation that the development will be built out to the fullest extent of the plan. For the Yorkway Redevelopment PUD, the Planning Board's Approval states:

The Board finds that there is a reasonable expectation that the proposed development, including development schedules contained in the concept plan, will be developed to the full extent of the plan. Testimony and evidence demonstrate that the Developer has a special connection to Baltimore County's eastside. The record further reflects that the Developer is fully capable of completing complex real estate development. The Developer's ownership of additional properties in the Dundalk area is further evidence of his commitment to the development of this PUD. Furthermore, the evidence is uncontroverted that the Developer's team is experienced and capable of delivering finished lots to the builder, Ryan Homes, who is under contract, to construct the homebuyer selection from the assortment of models available to them. It is anticipated that construction will commence in the fall/winter of 2009 with models to be built in the fall of 2009. It is also anticipated that the first residents of the new community will move in spring 2010.

Given this evidence, it was not an abuse of discretion for the Planning Board to make this finding.

D. Compliance with Section 430 B.C.Z.R.

Furthermore, the Planning Board did not abuse its discretion when it found the PUD complied with B.C.Z.R. Section 430. The Planning Board cited several sections within the B.C.Z.R. and demonstrated the proposed PUD met the standards laid out therein, including Sections 430.3.A, 430.B.1, 430.3.B.1, 430.3.C and 430.3.D. It states in the Approval:

The Board finds that, subject to any modifications and amendments in densities or uses required by the County Council in its resolution, the development is in compliance with BCZR Section 430. The Yorkway Redevelopment has been designed and engineered to minimize potential impacts to the surrounding community and to the public facilities that provide them service. The Board finds that any reduction or modification from the applicable requirements of the underlying zone is necessary to achieve the intent and purpose of CODE Section 32-4-245. The modifications, as outlined in the Concept Plan and Pattern Book, were necessary to achieve a dense development of detached single-family dwellings. The modifications are principally with respect to setbacks from side building faces.

The proposed PUD development is located within the Urban Rural Demarcation Line in compliance with 430.3.A BCZR

The proposed residential use of the property is a permitted use in compliance with Section 430.3.B.1 BCZR.

The Board recognizes that the proposal does not utilize the total density available and therefore the approved PUD is in compliance with 430.3.C BCZR.

The Board further recognizes that the single-family dwelling type is allowed in the D.R. 5.5 zone and therefore the approved PUD is in compliance with 430.3.D BCZR.

The Planning Board, in providing analysis of the applicable B.C.Z.R. sections, demonstrated that the evidence supported its findings, and that it was within its discretion to find compliance with Section 430 of the B.C.Z.R.

E. Conformance with the Master Plan

The Planning Board also evaluated the revised concept plan's conformance with the goals, objectives and recommendations of the Master Plan 2010. The Approval document states:

The Board finds that the concept plan is in conformance with the goals, objectives, and recommendations of the Master Plan or area plans.

Pursuant to the Master Plan 2010 page 141, the neighborhood exists within a "Community Conservation Area". The area is one of the older residential communities located within the Urban Rural Demarcation Line. The goals and objectives identified in the master plan include promotion of a successful neighborhood whereby there is incremental generational investment that continually revitalizes older neighborhoods.

The policies and goals of the Community Conservation Areas, as found in the Master Plan 2010 pages 140-155, focus on strengthening and enhancing the existing neighborhoods so that cycles of reinvestment are carried out.

Furthermore, the development of single-family detached homes promotes home ownership in the area. This is one of the policies identified in the Master Plan 2010 that will help maintain neighborhood stability. The Board accepts the recommendation of the Director of the Office of Planning found in the Staff Report prepared by that office dated May 21, 2009 that the approved PUD meets the basis for approval required by Section 32-4-245(d)(5) BCC.

The recommendations of the Office of Planning and the Approval's analysis convince me that the Planning Board did not abuse its discretion in finding conformance with the Master Plan 2010.

IV. Conclusion and Order

Having considered the record provided to me, including, most importantly, the Planning Board's Baltimore County Planned Unit Development Order, I find that the Planning Board's decision in approving this PUD Concept Plan is supported by the documentation and evidence presented to the Planning Board and does not constitute an abuse of discretion. The proposed development meets all of the intent, purposes, and standards contained in B.C.Z.R. and Section 32-4-241, *et seq.* of the B.C.C. Therefore, I approve the Yorkway Redevelopment Overlook PUD Concept Plan.

THEREFORE, IT IS ORDERED by the Hearing Officer of Baltimore County this 24th

_____ day of July, 2009, that the **Yorkway Redevelopment** PUD Concept Plan, marked as Developer's Exhibit 1 before the Planning Board, be and is hereby APPROVED, GRANTED and AFFIRMED pursuant to Baltimore County Code Section 32-4-246, subject to the Applicant's compliance with any conditions imposed by the Planning Board as set forth in the Planning Board's Baltimore County Planned Unit Development Approval, signed June 26, 2009.

IT IS FURTHER ORDERED that each Modification of Standards authorized by the Planning Board in its Approval: (i) for lots 1 through 66 inclusive, a side building face to side building face setback of 10' in lieu of the 20' minimum pursuant to Section 1B01.2.C.1.b of the Baltimore County Zoning Regulations (B.C.Z.R.), (ii) for lots 1, 18, 19, 38, 39, 45, 46, and 66, a side building face to public street right-of-way setback as close as 2' in lieu of the minimum 15' pursuant to B.C.Z.R. Section 1B01.2.C.1.b; (iii) for lots 1, 38, 39 and 45, a side building face to paving of a private road setback of 4' in lieu of the minimum 25' pursuant to B.C.Z.R. Section 1B01.2.C.1.b; (iv) for lots 1, 18, 19, 38, 39, 45, 46 and 66, a side building face to tract boundary setback as close as 2' in lieu of the minimum 15' pursuant to B.C.Z.R. Section 1B01.2.C.1.b; (v) 0 square feet per dwelling unit of open space, while paying a fee determined at the discretion of the Director of the Department of Recreation and Parks prior to Development Plan approval; (vi) for lots 19 and 46, a front building face to public street right-of-way or property line of 17' in lieu of the minimum 25' pursuant to B.C.Z.R. Section 1B01.2.C.1.b; (vii) for lots 1-18, 20-45 and 47-66 inclusive, a front building face to public street right-of-way or property line of 20' in lieu of the minimum 25' pursuant to B.C.Z.R. Section 1B01.2.C.1.b; (viii) for lots 18 and 46, a rear building face to public street right-of-way or property line of 21' in lieu of the minimum 30' pursuant to B.C.Z.R. Section 1B01.2.C.1.b; be APPROVED, GRANTED and AFFIRMED.

IT IS FURTHER ORDERED that any proposed changes to the Concept Plan that do not materially alter the Concept Plan shall be approved by the Director of Planning, if appropriate.

Any appeal from this Order must be taken in accordance with Section 32-4-281 of the Baltimore County Code.

WJW:dlw

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