

IN RE: PLANNED UNIT DEVELOPMENT	*	BEFORE THE
SE/S Campbell Boulevard (Proposed),		
S of White Marsh Boulevard (MD Rte. 43)	*	COMMISSIONER
(The Preserve at Windlass Run)		
	*	OF
15 th Election District		
6 th Council District	*	BALTIMORE COUNTY
Windlass Run, LLC, c/o	*	
MacKenzie Communities, LLC,		
	*	Case No. XV-948
<i>Applicant/Developer</i>		

* * * * *

HEARING OFFICER’S REVIEW AND APPROVAL ORDER

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 The Preserve at Windlass Run. The approved Preserve at Windlass Run PUD Concept Plan (revisions dated April 22, 2009, containing 6 sheets), was prepared by the civil engineering and land planning firm of Morris & Ritchie Associates, Inc. and has been marked as Developer’s Exhibit 1. The pattern book (revision dated April 22, 2009), which is a portion of the Concept Plan, was also prepared by Morris & Ritchie Associates, Inc. and has been marked as Developer’s Exhibit 2. This Concept Plan and pattern book reflect Applicant Windlass Run, LLC’s proposal to develop a residential townhouse and single-family detached development of 424 units. The subject property is an approximately 120.94-acre parcel located west of Maryland Route 43 on the south side of proposed Campbell Blvd. in the White Marsh area of southeastern Baltimore County. The property is currently zoned D.R.3.5, B.L., D.R. 2 and M.L.-I.M-M 43.

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 73-08.

Thereafter, the Applicant came before the County for the required informational/pre-concept plan conference on October 28, 2008. 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 February 2, 2009, and a Community Input Meeting (CIM) occurred on March 5, 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, revisions dated April 22, 2009, for approval. This submittal also included a revised Pattern Book.

The PUD Concept Plan proposed Modifications of Standards, as reflected on the plan itself and in the Pattern Book, including modifications of use, setback, minimum private yards, maximum number of group house units and length per group and lot width. Pursuant to B.C.C. Section 32-4-245(c)(3), the Planning Board has the authority to reduce or modify the zoning and development requirements that would otherwise be applicable to the development of the property.

Having received the revised PUD Concept Plan and Pattern Book, in accordance with B.C.C. Section 32-4-244, the Office of Planning prepared a lengthy report to the Planning Board, dated April 2, 2009, outlining the history of the project, discussing the review of the plan by the County agencies and the State Highway Administration, 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 Preserve at Windlass Run PUD Concept Plan and the

requested Modifications of Standards. This report was then provided to the Planning Board, and the Preserve at Windlass Run project was scheduled for consideration by the Board.

At the Planning Board meeting on May 7, 2009, Ms. Jennifer Nugent, the representative staff reviewer of the development review section of the Office of Planning, presented the Planning report regarding the subject proposal. This report covered all aspects of the proposal and addressed each of the statutory requirements of the Planning Board. The Planning report recommended approval of the PUD Concept Plan as proposed by the Applicant without change or condition. Subsequently at the same meeting, the Applicant's representatives made a presentation to the Board introducing the PUD Concept Plan. The Applicant engaged a court reporter to attend each of the Planning Board meetings and public hearing and to provide a transcript of the proceedings before the Planning Board. Transcripts of the May 7, 2009, and May 21, 2009, and June 4, 2009 Planning Board meetings and hearings are included in the Planning Board's file and have been made part of the record. At the meeting on May 7, 2009, G. Scott Barhight, Esquire, attorney for the Applicant, made a brief introduction of the project. Mr. Barhight was followed by the Applicant's land planner, Sean Davis, who presented the PUD Concept Plan, Pattern Book, and other materials to demonstrate to the 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 Planning staff's and Applicant's presentation, several Planning Board members asked questions regarding various topics, including: traffic impacts, compliance with the Master Plan and community plan and community concerns.

Next, during the public hearing, several members of the community also testified. Four community members spoke in favor of the proposal and/or the developer, stressing the quality of the proposal and the developer. Only one member of the community, Mr. Tim McCubbin, voiced his opposition to the PUD proposal. Mr. McCubbin expressed concerns, among other

things, regarding the density of the project, modification of standards, and the inclusion of townhouses.

Following the May 7, 2009 Planning Board meeting, the Applicant submitted additional materials demonstrating how the plan meets the relevant Code requirements. By cover letter from Applicant's counsel dated May 19, 2009, expert reports from an environmental consultant, Henry A. Leskinen, and a traffic engineer, Mickey Cornelius, and a proposed draft of Planning Board Findings were provided. Also by cover letter dated May 21, 2009, an expert report from an expert in land planning, Sean Davis, regarding B.C.Z.R. Section 502.1 and the modifications of standards was provided. These proffers of testimony and evidence of support of the PUD were made part of the record and are included in the Planning Board's file. In these written pieces, the Applicant addressed many of the findings that the Planning Board would need to make in order to approve the PUD Concept Plan and provided a summary of the evidence relating to each finding.

On May 21, 2009, the Planning Board reconvened, and the Office of Planning presented all of the additional information requested by the Planning Board, including a plan that shows the by-right development, an explanation of the application of the Master Plan and the Community Plan to the PUD proposal, and Campbell Boulevard completion information. Following the Planning staff's presentation, the Planning Board then asked additional questions of the Planning staff and conducted a deliberation on the plan. As noted above, a transcript of this deliberation is included in the file. At the end of the meeting, the Planning Board indicated that it would vote at the next scheduled meeting. I note that the file contains an additional submittal from the Applicant, dated June 3, 2009, containing copies of materials referenced by the Applicant and the Planning staff to complete the Planning Board file.

At the June 4, 2009, meeting, the Planning Board called for a vote and voted unanimously to approve the Preserve at Windlass Run PUD Concept Plan and each of the requested Modifications of Standards. On June 8, 2009, the Secretary to the Baltimore County Planning Board, Arnold F. "Pat" Keller, forwarded for my review the Planning Board's Baltimore County Planned Unit Development Approval document, signed by the Chairman of the Planning Board (also on June 8, 2009), which evidences the unanimous approval of the PUD Concept Plan. As of the date of this Order, no one has requested that I conduct a public hearing as a part of my review of the Planning Board approval.

Review of Planning Board's Approval

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 under B.C.C. Section 32-4-245 constitutes an abuse of the Planning Board's discretion or is unsupported by the documentation and evidence presented to the Board, approve the plan.

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 are in the public interest;
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.

In reviewing the Planning Board's decision to approve the Preserve at Windlass Run PUD Concept Plan, I have before me Mr. Keller's referral letter of June 8, 2009, which included the Planning Board's Baltimore County Planned Unit Development Approval document, and Planning Board's file in Case No. XV-948. I note at the outset that the file provided to me is quite voluminous and 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 and the State Highway Administration, the revised Concept Plan considered and approved by the Planning Board, and the Pattern Book. These last two (2) 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. The file also includes expert reports submitted by the Applicant with supporting documentation, transcripts, and other items. Attached to Mr. Keller's referral letter is a Document List, which references all items included in the file and available for consideration by the Planning Board.

Pursuant to the authority granted by B.C.C. Section 32-4-246, after a thorough review of this matter and upon consideration of the report of the Planning Board evidencing its approval of the Preserve at Windlass Run PUD Concept Plan, I find that the Planning Board clearly understood the standard upon which its decision was to be based. 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 its presentation materials, and, most importantly, by the Planning Board in its Approval document. The Board has clearly demonstrated that it understands its role and authority under the relevant Code provisions to approve a PUD and has clearly met its statutory requirements.

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. By way of example, the Planning staff addressed the Master Plan and modification of standards questions presented by the Planning Board. The Baltimore County Council adopted the Middle River Community Plan by Resolution 77-07 on August 6, 2007. The Community Plan was adopted and incorporated into the Baltimore County Master Plan 2010. In explanation, the staff stated:

The PUD meets the mixed-housing type component recommended by the Middle River Community Plan. It addresses the density specifically discussed in that document and the quality and diversity of housing types necessary to meet the projected needs of the Middle River Employment Centers and the BRAC employment opportunities. The proposal's respect for site design and environmental protection as evidenced by the Concept Plan, the Pattern Book and agency comments all indicate that it is compliance with the Master Plan and Community Plans.

Further, the staff stated:

One of the primary objectives of Section 32-4-245 is conformance of the proposal PUD with the Master Plan or area plans. The Middle River Community Plan, page 36, shows that a residential PUD comprised of mixed housing types of the density proposed was contemplated for the subject property. By adopting the Community Plan, the County Council adopted staff's recommendation in favor of this density and mix of housing types in order to respond to the needs of employers in the Middle River Community Plan area and to respond to the anticipated needs as a result of BRAC. In order to achieve the density contemplated in the Community Plan and to provide for the 'high quality housing options' these modifications of standards have been demonstrated to be necessary. Without a modification to the D.R. 3.5 zone there could be no townhouse use and no community center both of which use is directly pertained to stated objectives in the Community Plan.

This finding is well supported by evidence contained in the record, which evidence appears to be uncontroverted.

As noted above, the Planning Board also had before it modifications of standards as to use, setback minimum private yards, maximum number of group house units and length per group and lot width. As the case record makes clear, the requested Modifications of Standards are necessary to achieve the intent and purpose of the B.C.C. and provide a community benefit. Strict adherence to the requirements of the underlying zoning classification would not allow for this project to proceed at this location as conceived. As stated in the Planning Board approval, the requested modifications have allowed the Applicant to design a community specifically targeted to provide a mixed-housing type community consistent with the Middle River Community Plan.

Another zoning matter, which was addressed by the Planning Board, related to the issue of referral of the single-family units to the Design Review Panel. I have reviewed the analysis provided by the Planning Board in its Approval document and agree with its rationale and conclusion. In this case, the PUD Concept Plan did not have to be referred to the Design Review Panel for comment.

Having considered the record provided to me, including, most importantly, the Planning Board's Baltimore County Planned Unit Development Approval document, I find that the Planning Board's decision in approving this PUD Concept Plan is supported by the documentation and evidence presented to the 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. Accordingly, I approve the Preserve at Windlass Run PUD Concept Plan and Pattern Book.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 25th day of June, 2009, that the **Preserve at Windlass Run** PUD Concept, marked as Developer's Exhibits 1 and 2, be and is hereby APPROVED, 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 document, signed June 8, 2009.

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.

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