

IN RE: PLANNED UNIT DEVELOPMENT	*	BEFORE THE ZONING
E/S Kenwood Avenue @ NE Corner		
Delegge Road	*	COMMISSIONER
(Brandywine)	*	OF
14 th Election District	*	BALTIMORE COUNTY
6 th Council District		
	*	
Marie A. Hutson, et al		
<i>Owners</i>	*	
Iron Horse Properties, LLC		
<i>Applicant/Developer</i>	*	Case No. XIV-472
* * * * *		

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), referred to as “Brandywine PUD” a/k/a “Brandywine”. The approved Brandywine PUD Concept Plan was prepared by the land planning and engineering firm of Martin & Phillips Design Associates, Inc. and has been marked as Developer’s Exhibit 1. This plan reflects the Applicant’s proposal to develop a 72-unit for-sale townhome project. The subject property is a 7.44 gross acre parcel located at the northeast corner of Delegge Road at its intersection with Kenwood Avenue (MD Rt. 588), in eastern Baltimore County. The property is currently zoned B.L., B.L.R., D.R.3.5, and D.R.5.5.

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 65-08. The community benefit proposed as part of that previously approved Resolution was amended via Resolution 31-09.

The Applicant/Developer came before the County for the required informational and pre-concept meeting on September 30, 2008. The 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 January 12, 2009, and a Community Input Meeting (CIM) was held on February 18, 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 to the Office of Planning, dated April 27, 2009, for approval. This submittal also included a revised Pattern Book and other materials. The density of the project was reduced from 73 to 72 units at that time.

The PUD Concept Plan proposed Modifications of Standards, as reflected on the plan itself and in the Pattern Book, including modifications of use, setback, residential transition area, height, and signage requirements. 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. As the case record makes clear, the requested Modifications of Standards are necessary to allow for the creation of this community. Strict adherence to the requirements of the underlying zoning classification would not allow for this type of product at this location.

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 June 18, 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 Brandywine PUD Concept Plan and the requested Modifications of Standards, subject to listed conditions. This report was then provided to the Planning Board, and the Brandywine project was formally introduced to the Planning Board for consideration.

Prior to appearing before the Planning Board to present the PUD Concept Plan, the Applicant submitted a Proffer of Testimony and Evidence in Support of PUD Concept Plan to the Board members, demonstrating how the plan meets the relevant Code requirements. This Proffer was made part of the record and is included in the Planning Board's file. In this written piece, the Applicant addressed each 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.

At the Planning Board meeting on July 2, 2009, the Applicant's representatives made a presentation to the Board introducing the PUD Concept Plan. The Planning Board deliberated on the project on July 16, 2009, and again on November 5, 2009. The Applicant engaged a court reporter to attend the Planning Board meetings and public hearing and to provide a transcript of the proceedings before the Planning Board, and the transcripts are included in the Planning Board's file and have been made part of the record.

At the meeting on July 2, 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, David L. Martin, 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.).

On November 5, 2009, the Planning Board reconvened, and the Office of Planning officially presented its First Amended Report to the Planning Board. The transcript demonstrates

that, during this presentation, the Office of Planning provided additional information on the issues raised during the prior proceedings, including the proposed homes' elevations, types of materials which will be used, and a "Resolution of Issues Appendix" (attached to the Office of Planning's First Amended Report) which addressed how the Applicant resolved the recommendations of the Office of Planning listed in its June 18, 2009 Staff Report and those raised during the Planning Board deliberations.

The November 5, 2009 Planning Office First Amended Report recommended approval of the PUD Concept Plan as proposed by the Applicant without further change. Following the Planning staff's presentation, the Planning Board then conducted a deliberation on the plan. As indicated above, a transcript of this deliberation is included in the file. At the end of the meeting, the Planning Board unanimously voted to approve the PUD Concept Plan and each of the requested Modifications of Standards. On November 13, 2009, the Secretary to the Baltimore County Planning Board, Arnold F. "Pat" Keller, forwarded for my review the Planning Board's County Planned Unit Development Approval document, signed by the Chairman of the Planning Board on November 10, 2009, which evidences the unanimous approval of the PUD Concept Plan.

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 Brandywine PUD Concept Plan, I have before me Mr. Keller's referral letter of November 13, 2009, which included the Planning Board's Baltimore County Planned Unit Development Approval document, and Permits and Development Management's Case No. XIV-472. 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 three expert opinion letters

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 Brandywine 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 Proffers, presentation, and additional submittals, 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.

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 Board made a finding (on pages 2 and 3 of its Approval document), based on the evidence presented, that the project will not have an adverse impact on traffic:

“The Board has considered traffic data presented by the PUD Applicants' traffic engineer, which indicates that the number of additional vehicles generated by the development will be able to safely be accommodated by the existing roadways and that good level of service conditions are projected to remain at the nearby intersections. Specifically, the PUD is projected to generate 32 weekday morning peak hour trips and 38 weekday evening peak hour trips, which is less peak hour trips than would be generated if the site were developed with a commercial development, which is permitted by the base requirements of the zone. Further, the proposed internal road and alley system is designed in accordance with Public Works standards. No Baltimore County or State reviewing agency has made adverse comment nor was any study produced contradicting the traffic data as presented and so therefore the Board finds that the approved PUD will not tend to create congestion in roads, streets or alleys therein and conforms to Section 502.1.B, BCZR.”

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. Therefore, I approve the Brandywine PUD Concept Plan.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 23rd day of November, 2009, that the **Brandywine** PUD Concept, marked as Developer's Exhibit 1, be and is hereby APPROVED, pursuant to Baltimore County Code Section 32-4-246, and subject to the Applicant's compliance with the terms and conditions imposed by the Planning Board as set forth in the Planning Board's Baltimore County Planned Unit Development Approval document, signed November 10, 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