

IN RE: PLANNED UNIT DEVELOPMENT	*	BEFORE THE
S/ side of Lyons Mill Road, E/ of Owings Mills Boulevard	*	HEARING OFFICER
Ballard Green PUD	*	FOR
(9401 Lyons Mill Road)	*	BALTIMORE COUNTY
2 nd Election District		
4 th Councilmanic District	*	
Ballard Family, LLC	*	
<i>Legal Owner/ Applicant</i>		Case No. 02-739
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**HEARING OFFICER’S REVIEW AND OPINION
AND PLANNED UNIT DEVELOPMENT PLAN ORDER**

I. Introductory Statement

This matter comes before this Hearing Officer/Deputy Zoning Commissioner, pursuant to Section 32-4-245 of the Baltimore County Code (B.C.C.), for review and determination of whether to grant approval of the proposed Ballard Green Planned Unit Development (“PUD”) Development Plan filed by the legal owner of the subject property, Ballard Family, LLC, and their development consultants, Gaylord Brooks Realty Co., Inc., and prepared by Morris & Ritchie Associates, Inc. (collectively referred to as “the Developer”). The property is known as 9401 Lyons Mill Road and is located on the south side of Lyons Mill Road, southwest of Owings Mills Boulevard and north of Winands Road, in the Owings Mills area of Baltimore County. It is irregularly shaped and contains approximately 105 acres, more or less, zoned primarily D.R.3.5, with areas at the eastern side of the property zoned D.R.16 and D.R.5.5. The property is surrounded virtually on all sides by small clusters of residential neighborhoods and communities and consists mainly of farmland, with some wooded areas interspersed as well. The property is improved with an existing home and several existing stone outbuildings.

II. The PUD Proposal and Procedural Background

The Ballard Green PUD proposes a combination of uses including a variety of home types, retail/office services, a community center, a new elementary school site, playgrounds and ball fields, preservation of a historic house, and an integrated open space system throughout the development. The residential component includes single-family attached townhomes and multi-family condominiums. Of the 521 proposed dwelling units, 188 are front garage townhomes, 189 are rear garage townhomes, 46 are live/work units, and 98 are multi-family condominiums. The live/work units will be located within the commercial area of the development and will feature a pedestrian friendly mixture of retail and office uses on the first and second floors with residences above. In addition to a community center, pool and various parks, the proposed 700 student Elementary School (to be constructed by Baltimore County) will provide a valuable amenity to the proposed Ballard Green development as well as the surrounding community. It is evident from the testimony and evidence presented at the hearing that the Developer and its project team have worked closely with the Board of Education of Baltimore County as well as the Department of Recreation and Parks in planning the proposed school site.

It is also noteworthy that the subject property and more particularly the historic structure known as "Plinlimmon" is listed in the National Register of Historic Places and is included in the Baltimore County Landmarks list. The site is one of the oldest farmsteads in Owings Mills and the Ballard Green PUD proposes the preservation of the historic site that includes the existing house and two stone outbuildings. The house dates back to the early 1800s and, while a variety of modern amenities have been incorporated, it still maintains many historically significant exterior features. The Ballard Green PUD integrates the historic house and outbuildings into the overall development scheme, proposing an adaptive re-use of the house and outbuildings as a unique office building or restaurant.

As to the history of the project, on February 1, 2010, the Baltimore County Council passed Resolution No. 4-10 to approve the review of the proposed Ballard Green PUD. A PUD Concept Plan for the proposed development was submitted to the County, and a Concept Plan Conference (“CPC”) was held on May 18, 2010. As the name suggests, the Concept Plan is a schematic representation of the proposed development and is initially reviewed by and discussed between representatives of the Developer and the reviewing County agencies at the CPC. Thereafter, as required by B.C.C. Section 32-4-242, a Community Input Meeting (“CIM”) is scheduled during evening hours at a location near the property or in Towson, if no other meeting site can be scheduled, in order to provide residents of the area an opportunity to review and comment on the plan. In this case, the CIM was held on July 7, 2010, at 7:00 P.M. at the Randallstown Community Center located at 3505 Resource Drive. In attendance were members of the development team and the County’s representative, as well as a number of interested persons from the community. Following the CIM, the PUD Development Plan was prepared and revised to address the comments received at the CPC and CIM. The PUD Development Plan was submitted for further review at the Development Plan Conference (“DPC”), which was held between the Developer’s representatives and County agency representatives to review and scrutinize the plan further. The DPC was held on September 22, 2010. Following the DPC, a Hearing on the PUD Development Plan was scheduled and convened on October 14, 2010 at 9:00 AM in room 106 of the County Office Building located in Towson. The hearing is conducted in a manner similar to the traditional Hearing Officer’s Hearing or “HOH” in accordance with the provisions of Sections 32-4-227 and 32-4-228 of the County Code.

At the public hearing, G. Scott Barhight, Esquire and Adam D. Baker, Esquire of Whiteford, Taylor & Preston, LLP appeared as attorneys on behalf of the applicant, Ballard Family, LLC. Benjamin W. Ballard, Managing Member, appeared on behalf of Ballard Family,

LLC. Also appearing in support of development plan approval were Stephen R. Smith, President of Gaylord Brooks Realty Co., Inc., the firm assisting the Ballard Family in the development of the subject property; Sean Davis, a Registered Landscape Architect with Morris & Ritchie Associates, Inc., the planning and engineering consultants responsible for preparation of the PUD Development Plan; and Kenneth Schmid, Vice President of Traffic Concepts, Inc. Also appearing as members of the development project team were David S. Thaler with D.S. Thaler & Associates, Inc., Thomas Neugebauer with Morris & Ritchie Associates, Inc., and Francesco Gentile with Geo-Technology Associates, Inc.

Numerous representatives of the various Baltimore County agencies tasked with reviewing the PUD Development Plan attended the public hearing, including the following individuals from the Department of Permits and Development Management: Daryl Putty (Project Manager); Dennis Kennedy (Bureau of Development Plans Review); Aaron Tsui (Zoning Review Office), and Ronald Goodwin (Bureau of Land Acquisition). Also appearing on behalf of the County were Jeff Livingston (Department of Environmental Protection and Resource Management), Jenifer Nugent (Office of Planning), and Bruce Gill (Department of Recreation and Parks). Written development plan comments were received from Steven D. Foster, on behalf of the Maryland State Highway Administration (SHA), and Lt. Don W. Muddiman, on behalf of Baltimore County Fire Marshal's Office. These and other agency comments are contained within the case file and are part of the record of this case. Several interested citizens also attended the hearing, including Clay Troy of 9528 Lyonswood Road, Ellen McNeill of 2 Egypt Farm Road, William Bralove of 4272 Mary Ridge Drive, and Noel Levy of 11 Windsong Court. Each of these individuals offered general comments regarding the proposed development and expressed their issues and concerns.

The role of each reviewing County agency in the development review and approval process is to perform an independent and thorough review of the PUD Development Plan as it pertains to its specific area of concern and expertise. The agencies specifically comment on whether the plan complies with all applicable Federal, State, and/or County laws and regulations pertaining to development and related issues. The County agencies maintain this role throughout the entire development plan and approval process, which includes providing input to the Hearing Officer, either in writing or in person, at the hearing. Continued review of the plan is undertaken after the Hearing Officer's Hearing during the Phase II review of the project. The Phase II review continues until a plat is recorded in the Land Records of Baltimore County and permits are issued for construction.

At the hearing, the 13-page redlined/greenlined Development Plan with a revision date of 10/13/10 containing the details and specifics of the proposed development was introduced and marked and accepted into evidence as Developer's Exhibit 2. Several of the Baltimore County agencies had additional comments at the hearing, for which they requested the record be left open. As a result, the Developer agreed to address these comments on a subsequent redlined/greenlined/bluelined Development Plan and a revised Pattern Book, which would be submitted following the hearing and marked and accepted into evidence as Developer's Exhibits 5 and 6, respectively. The County agencies and citizens present were agreeable to this proposal.

Baltimore County Council Bill No. 5-10, passed by the County Council on February 16, 2010, revised the process for the review and approval of Planned Unit Developments in Baltimore County. One of the major impacts of the legislation is the shift in the authority to review and approve a PUD from the Baltimore County Planning Board to the Baltimore County Hearing Officer. In an effort to facilitate a smooth transition between the old and new processes, the bill provided a caveat that any PUD proposal for which the County Council had passed a

resolution prior to the effective date of Bill No. 5-10 had the option of proceeding under the law in effect at the time the resolution was passed (i.e. – proceeding before the Planning Board) or under the new process set forth in the bill (i.e. – proceeding before the Hearing Officer). The Resolution approving the review of the proposed Ballard Green PUD was passed by the County Council on February 1, 2010. The Developer of the Ballard Green PUD had the option of proceeding before the Planning Board or the Hearing Officer and chose the latter at the request of the community.

III. Testimony and Evidence Presented

Pursuant to B.C.C. Sections 32-4-227 and 32-4-228, which regulate the conduct of the Hearing Officer’s Hearing, I am required first to identify any unresolved comments or issues as of the date of the hearing. In accordance with this mandate, I inquired of the Developer’s attorney, Mr. Barhight, as to any unresolved issues. Mr. Barhight indicated that most issues had been addressed on the redlined/greenlined Plan, but there were still some matters to be resolved. He explained that the Planning Office was submitting a revised comment at the hearing containing nine specific issues to be addressed on the Development Plan and Pattern Book. In addition, the Department of Public Works (“DPW”) had identified specific storm drain routing issues, and the Environmental Impact Review (“EIR”) Section of the Department of Environmental Protection and Resource Management (“DEPRM”) had identified some changes to the alternatives analysis due to issues related to Owings Mills Boulevard extended.¹ Mr. Barhight indicated he anticipated the Developer would submit a revised redlined/greenlined/bluelined PUD Development Plan and Pattern Book on Monday, October 18, 2010 to address most if not all of these issues, and would make changes as required to the bluelined version.

¹ “Owings Mills Boulevard extended” is a Baltimore County capital project that is currently ongoing to extend Owings Mills Boulevard from its terminus at Lyons Mill Road across the eastern portion of the property southward to Winands Road, as shown on the PUD Development Plan.

I then questioned the representatives of each of the County agencies who reviewed the Plan regarding the existence of any outstanding issues. Their responses are summarized below:

Department of Recreation and Parks: Bruce Gill appeared on behalf of the Department of Recreation and Parks and indicated that the local open space requirement for 521 units is 521,000 square feet or approximately 12 acres. He further indicated that the Plan provides for passive and active open space that includes a pool and community center, as well as open space for ball fields to be dedicated to the Department of Recreation and Parks. Mr. Gill did indicate his agency was concerned that access to the area of the local open space where the ball fields are proposed contains easements for two underground gas pipelines, but also indicated his agency was encouraged that the Developer would be able to resolve any access issues with the two companies that hold those easements. There being no other outstanding issues, Mr. Gill indicated his agency recommends approval of the redlined/greenlined PUD Development Plan.

Zoning Review: Aaron Tsui appeared as the representative for the Zoning Review Office and requested that the Final Development Plan (also known as the “FDP”) include a chart outlining the requested modification of standards. Otherwise, he indicated his agency recommends approval of the redlined/greenlined PUD Development Plan.

Bureau of Land Acquisition: Ron Goodwin appeared on behalf of the Bureau of Land Acquisition and indicated there were some minor labeling issues that needed to be addressed, including HOA ownership of bio-retention facilities and some of the private storm water management areas, and requested that the storm water management easement for Baltimore County be labeled to enable future inspection, and also indicated several minor note revisions which were made at the hearing. He indicated these issues would not prevent plan approval and indicated his agency recommends approval of the redlined/greenlined PUD Development Plan.

Bureau of Development Plans Review: Dennis Kennedy appeared on behalf of the Bureau of Development Plans Review and requested that the record be kept open in order for the applicant to address several minor engineering concerns. In addition, Mr. Kennedy testified that the Floodplain Study was not yet approved and that if the size of the floodplain changed, there might be some environmental buffers that change as well. Finally, Mr. Kennedy indicated that all the requests for waivers of Public Works Standards were supported by the Director, except for the request involving the proposed use of stamped concrete in lieu of standard pavement, as shown on the redlined/greenlined plan; however, he indicated that discussions with the Director could continue on this issue.

Office of Planning: Jenifer Nugent appeared on behalf of the Office of Planning and indicated that her agency had prepared the Final Report as required by B.C.C. Section 32-4-244, but also requested that the record be kept open in order for the Developer to address several issues raised in the Report. Ms. Nugent then highlighted several conclusions and recommendations in the Report as follows: that the development plan is in conformance with the goals, objectives, and recommendations of the Baltimore County Master Plan 2010 and the Owings Mills Park and Open Space Concept Plan; that the proffered School Impact Analysis projects student enrollment at New Town Elementary School to be over capacity, but there is sufficient spare capacity in adjacent elementary school districts to accommodate the increase in student population to comply with the adequate public facilities law; that the Baltimore County Landmarks Preservation Commission (“LPC”) and the Planning Board each met to consider the impact of the proposed development on the historic property and structures and voted to support the proposed PUD (with certain conditions imposed by the Planning Board); that the proposed 14 acre site for a future Baltimore County Elementary School be accepted as the public benefit; further, that the Office of Planning finds: that the PUD meets all eight compatibility objectives

set forth in B.C.C. Section 32-4-402(d); that the proposed PUD meets the performance standards set forth in Section 260 of the B.C.Z.R. subject to certain conditions; that the development is in compliance with the requirements for a general development PUD pursuant to Section 430 of the B.C.Z.R.; that the proposed PUD achieves a higher standard than that of the base requirements of the Zone and that the requested Modifications of Standards are necessary to the intent and purpose of the County Code; and that the requested Waivers of Public Works Standards are needed to execute the proposed PUD design. Ms. Nugent then reiterated the nine conditions or requirements stated in the Report that still need to be addressed.

Department of Environmental Protection and Resource Management: Jeff Livingston appeared on behalf of the Department of Environmental Protection and Resource Management (“DEPRM”) and indicated that DEPRM could not recommend approval at this time and requested that the record be left open in order for the Developer to address DEPRM’s concerns. Mr. Livingston indicated that there are labeling issues with the Plan, that the Environmental Impact Review was not complete, and reiterated Dennis Kennedy’s comment that the Floodplain Study was not yet approved.

Following the County Agency comments, I asked the individuals from the community attending the public hearing whether they were aware of any unresolved issues or wished to offer testimony on the proposed Ballard Green PUD. Clay Troy, a neighbor residing at 9928 Lions Mill Road -- directly to the south of the proposed development -- testified that throughout the process, there had been very good communication between the Developer’s representatives and the community and that many of the community’s concerns were taken into account in the planning and design of the development. As an example of the consideration the Developer had for the community’s concerns, Mr. Troy pointed to the tree buffer that has been proposed between the PUD and his property. Ellen McNeill, a member of the Owings Mills New Town

Community Association, testified on behalf of the Association that there were concerns regarding the traffic on Lyons Mill Road. Ms. McNeill related the Association's concern that some of the proposed entry/exit points for the Ballard Green PUD development should be lighted intersections. Ms. McNeill did commend the Developer for the manner in which it engaged the community throughout the process.

William Bralove, a resident of Randallstown who owns condominiums in the New Town area, voiced concerns regarding the safety of gas lines that run from northeast to southwest underground through the Ballard property, including a portion underneath the area to be dedicated for the ball fields adjacent to the school site. He also cross-examined Sean Davis with Morris & Ritchie Associates, Inc. regarding the development of the school site and ball fields with knowledge of the gas lines underground. In his responses, Mr. Davis confirmed that the Developer would dedicate the area designated as the school site to Baltimore County for development as an elementary school. Mr. Davis also confirmed that Baltimore County was aware of the gas lines running underneath the Ballard property and did not oppose the location of the school or ball fields relative to those lines.

Moving to the formal portion of the hearing, Mr. Barhight asked Stephen Smith, President of Gaylord Brooks Realty Company, Inc., to provide testimony on the background of the Ballard Green PUD. Mr. Smith indicated his understanding, based on his conversations with the Ballard family, that they wished for any development of the property to have a positive impact on the community. The property has been in their family for many years, with numerous offers to sell the property in the past for development that had been resisted until recently. At this juncture, the family believes it is an appropriate time to develop the property, but again, want to ensure that the development results in a positive legacy. Mr. Smith explained that community outreach was one of the first steps taken in this development concept. The

development team initially contacted over 30 community organizations (which has since grown to over 40) and began meeting with these groups as early as November, 2009. Over the last year, there have been over 20 meetings with community groups and members. Communication with County agencies has also been a vital component to this project. It became evident during all these meetings and discussions that a main driver of the development would be the school site as a focal point of the community, as well as the mixed uses of residential and commercial. The goal was a sustainable community for all aspects of life -- from early families to more mature retirees -- with walkability, the presence of a school and open space, and other family oriented amenities. The redlined/greenlined Plan presented at the hearing was the result of this extensive dialogue between the Developer and the community and the County reviewing agencies. Mr. Smith also indicated that a variety of the community's concerns have been addressed in the current iteration of the Plan and it was at the community's request that the Developer proceed before the Hearing Officer for review and approval of the plan in lieu of the Planning Board. As mentioned previously, the Developer had the option of proceeding before the Planning Board under County Council Bill No. 5-10, but allowed the community to decide from whom the Plan should receive consideration and the community chose the Hearing Officer.

Following Mr. Smith's testimony, Mr. Barhight asked Sean Davis with Morris & Ritchie Associates, Inc., to present the 13-page redlined/greenlined PUD Development Plan that was collectively marked and accepted into evidence as Developer's Exhibit 2. Mr. Davis was qualified and accepted as an expert in the fields land planning, development and landscape architecture and his resume was marked and accepted into evidence as Developer's Exhibit 1. He presented a brief history of the property, providing background on the existing conditions, the zoning, the characteristics and uses of the surrounding area, and the status of the County agency comments with regard to the redlined/greenlined PUD Development Plan. Mr. Davis provided

detailed testimony in support of why the PUD Development Plan satisfies the requirements set forth in B.C.C. Section 32-4-245(c), including the relevant criteria set forth in Sections 502.1 and 430 of the B.C.Z.R.

Mr. Barhight also called Ken Schmid, Vice President of Traffic Concepts, Inc., to provide testimony regarding the traffic impact that the Ballard Green PUD presents. Mr. Schmid was qualified and accepted as an expert in the field of traffic engineering and his resume was marked and accepted into evidence as Developer's Exhibit 3. Mr. Schmid testified that a traffic study was performed, described the methodology of the study, and explained the conclusions of the study. Mr. Schmid concluded that the surrounding road network would be adequate to accommodate the traffic generated by the Ballard Green PUD.

At the conclusion of the hearing, the undersigned left the record open to allow the Developer and the reviewing County agencies the opportunity to resolve the outstanding issues that were identified during the hearing. The undersigned then received written comments from the following: the Zoning Review Office dated October 26, 2010 indicating that it had no further comments on the plan notes as added; the Office of Planning dated October 14, 2010 indicating all issues had been resolved and recommending approval of the PUD Development Plan; and the Department of Environmental Protection and Resource Management dated November 8, 2010 recommending that the PUD Development Plan be approved.

Thereafter, the undersigned received a letter dated November 18, 2010 from County Attorney John E. Beverungen regarding an unresolved issue between the Developer and the County concerning the public works project for the proposed extension of Owings Mills Boulevard south from Lyons Mill Road. Mr. Beverungen indicated that a dispute had arisen between the Developer and the County as to the dedication of land for this project by the Developer and whether that dedication should be without cost to the County as part of the overall

development process, or whether it is compensable as a “taking” or “exaction” under condemnation law. Mr. Beverungen asserted that the dedication should be without cost as part of the County’s development protocols and requirements, as well as by virtue of the fact that such dedication was mentioned in the notes on the Development Plan and in the Pattern Book. The Developer through its attorney, G. Scott Barhight, responded with a letter dated November 19, 2010, stating that prior to the Developer’s filing of the PUD, the County took affirmative steps to acquire a portion of the subject property for the road extension as part of the “quick take” filing of a condemnation suit in the Circuit Court of Baltimore County, and commenced construction. He indicated that the Developer was lead to believe from County authorities that all road and public works issues had been resolved and that the County had chosen to resolve the dedication of the right-of-way for the road extension with the condemnation proceedings.

Following those letters, the parties requested and were granted time to meet and discuss their respective positions in an attempt to resolve this issue informally. In that vein, the undersigned was notified that a resolution had been reached and the parties had executed a “Mutual Release and Settlement Agreement” (hereinafter “the Agreement”). This Agreement shall be incorporated herein by reference and a fully executed copy marked and accepted into evidence as Developer/County Joint Exhibit 1. The Agreement is self explanatory, but is highlighted by the parties’ agreement that the \$301,135.00 deposited with the Court as the Circuit Court appointed appraisal of the property and withdrawn by the Developer be retained by the Developer as compensation for the right-of-way dedication, and that the Developer shall execute a Deed conveying the right-of-way to the County in fee simple, as well as temporary construction and revertible slope easements. This issue is now resolved.

IV. Factual Findings Pursuant to B.C.C. Section 32-4-245

B.C.C. Section 32-4-245(c) provides that the Hearing Officer may approve a proposed PUD development plan only upon making certain findings. In making these findings, I acknowledge that I have considered the PUD Development Plan, the pattern book, and other materials contained within the Baltimore County PDM file, including County agency comments, and that I have also considered the testimony and evidence presented by the development team and any statements or information provided by the community. Based upon my consideration of all of the aforementioned, I make the following findings in accordance with Section 32-4-245(c):

(1) I find that the Ballard Green PUD meets the intent, purpose, conditions, and standards of B.C.C. Section 32-4-245. I acknowledge the receipt of and have considered any and all written comments offered by the Directors of the Office of Planning, Department of Economic Development, Department of Permits and Development Management, Office of Community Conservation, Department of Environmental Protection and Resource Management, Department of Public Works and Department of Recreation and Parks. I have reviewed the PUD within the context of the Baltimore County Zoning Regulations (“B.C.Z.R.”) and Development Regulations. I find that all technical aspects of the processing and review of the Ballard Green PUD have been addressed. Having considered the Plan and the requested Modifications of Standards, I find that the Modifications of Standards are necessary to comply with the intent and purpose of B.C.C. Section 32-4-245 and are in the public interest. I also find that the Ballard Green PUD achieves a higher standard than that of the base requirements of the Zone. Through the use of the PUD process, the Developer has created multiple opportunities for individuals, couples, and families to live where they work and shop, while maintaining a high level of quality in terms of materials and design.

(2) I find that the Ballard Green PUD meets the basis for approval required by B.C.C. Section 32-4-245(c)(2) and will conform to Section 502.1.A, B, C, D, E, and F of the B.C.Z.R. and will constitute a good design, use, and layout of the proposed site. As to the specific 502.1 criteria, I find the following:

A. In considering the testimony and evidence presented by the witnesses at the hearing, I concur with the position that the variety of uses proposed for the Ballard Green PUD does not constitute a hazardous use of the property. I accept the assurance of the Developer and the County agencies that all structures, utilities, and support systems will be constructed to all regulatory standards. These standards can be assured through the permitting and inspection process already in place within Baltimore County. I find that the Ballard Green PUD is not deemed to be a detriment to the health, safety, or general welfare of the surrounding community and that the PUD conforms to Section 502.1.A of the BCZR.

B. I have considered the traffic analysis presented by Ken Schmid with Traffic Concepts, Inc., which indicates that the existing roadways will safely accommodate the number of additional vehicles generated by the development and that a good level of service conditions are projected to remain at the nearby intersections. Furthermore, the internal road and alley system is designed in accordance with Public Works standards. No Baltimore County or State reviewing agency has made an adverse comment nor was any study produced contradicting the traffic data as presented. As a result, I find that the PUD will not tend to create congestion in roads, streets, or alleys therein and conforms to Section 502.1.B of the B.C.Z.R.

C. I acknowledge the Developer's assurance together with the concurrence of

County reviewing agencies that all buildings will be constructed as per all required codes and regulations and will be occupied pursuant to all necessary permits. The design allows for access of emergency vehicles. I find that the development will not create a potential hazard from fire, panic, or other danger and that the PUD conforms to Section 502.1.C of the B.C.Z.R.

D. The Ballard Green PUD proposes to develop more dwelling units (521) than what is permitted by right (431) given the land's acreage; however, in my judgment, the building types and site layout show that the 105± acre site can accommodate the increased population. The property lies at the junction between predominately single-family detached dwelling-type neighborhoods to the south and more densely developed townhome and multi-family neighborhoods to the north. The subject property provides a natural transition between these two areas without overburdening the land. I am also aware of the existing, surrounding recreational amenities and concur that the PUD design and layout with the application of the Modifications of Standards will provide for adequate open space for the residential and commercial population. Consequently, I find that the PUD will not tend to overcrowd the land or result in an undue concentration of population and is in conformance with Section 502.1.D of the B.C.Z.R.

E. I acknowledge the Developer's confirmation that the Ballard Green PUD is not located in an area of special concern or deficiency for sewer or water service as determined by the Baltimore County 2010 Basic Services Maps. I acknowledge that the proposed 700 student Elementary School will provide additional capacity for the Board of Education to serve Ballard Green and the surrounding community. Based on the

projections required under Baltimore County's adequate public facilities regulations for schools, the area middle school and high school contain sufficient capacity to fulfill the projected education needs of the proposed community. Although the area elementary school projects student enrollment to be over capacity, the Office of Planning noted in its agency comments that there is sufficient spare capacity in adjacent elementary school districts to accommodate the increase in student population. Further, as no written comments offered by the Directors of the Office of Planning, Department of Economic Development, Department of Permits and Development Management, Office of Community Conservation, Department of Environmental Protection and Resource Management, Department of Public Works and Department of Recreation and Parks indicate any interference with the adequate provisions under their purview, I find that the PUD does not interfere with the adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements and therefore complies with Section 502.1.E of the B.C.Z.R.

F. Upon consideration of plans and materials presented, the Ballard Green PUD presents no impedance to light and air. The site layout and design of the buildings and network of access allows for adequate access to light and air, and, as a result, I find that the PUD will not interfere with adequate light and air and conforms to Section 502.1.F of the B.C.Z.R.

(3) I find that there is a reasonable expectation that the Ballard Green PUD, including the development schedules contained in the PUD Development Plan, will be developed to the full extent of the plan. The Developer has provided testimony and submitted resumes, which collectively demonstrate the experience of the PUD development team, and

provide me with the assurances that the Developer has the financial and technical ability to fully develop the PUD as shown on the Development Plan, thereby meeting the requirements of B.C.C. Section 32-4-245(c)(3). I also acknowledge the exemplary manner in which the Developer has proceeded to date vis-à-vis the community and County agencies, which further supports this finding.

(4) I find that, subject to the modifications approved by the Baltimore County Council in Resolution 4-10 and pursuant to B.C.C. Section 32-4-242(c), the proposed PUD development is in compliance with the requirements for a general development PUD pursuant to Section 430 of the B.C.Z.R. and meets the basis for approval required by B.C.C. Section 32-4-245(c)(4). This finding is based on the following:

(a) That the proposed PUD is located within the Urban Rural Demarcation Line and is in compliance with Section 430.3.A of the B.C.Z.R.; and

(b) That the residential and non-residential uses are permitted pursuant to Sections 430.3.B.1 and .2 of the B.C.Z.R. The Baltimore County Council has confirmed this mixed-use general development PUD through Baltimore County Council Resolution 4-10. The proposed PUD's use of the property is therefore in compliance with Section 430.3.B of the B.C.Z.R.; and

(c) That pursuant to the authority granted in B.C.C. Section 32-4-242(c)(2), the Baltimore County Council, through its actions and Resolution 4-10 has modified Section 430.3.C.1 of the B.C.Z.R. which addresses the permitted densities and manner in which density is utilized in a residential Zone; and

(d) That single-family attached townhomes and multi-family condominiums are permitted pursuant to Section 430.3.D of the B.C.Z.R., subject to the requirements of

B.C.C. Section 32-4-242(c), which has been satisfied by County Council Resolution 4-10.

(5) I find that the PUD Development Plan is in conformance with the goals, objectives, and recommendations of the Master Plan, area plans, and the Office of Planning. The Master Plan 2010 Land Management Area Plan designation for the area of the Ballard Green PUD is the “Owings Mills Growth Area.” The area exceeds 13,000 acres and is designated as a growth area due to its proximity to a planned regional transportation network. One of the primary purposes of the Owings Mills Growth Area is to provide schools, parks, and a mix of housing types clustered around a dense commercial core. The Ballard Green PUD provides an appropriate blend of residential, retail and office in a designated growth area of Baltimore County; provides public facilities and services in an effective and timely manner to support planned growth; affords an opportunity for effective transit and pedestrian connections; maintains high-quality design, development, and landscaping; protects community conservation and sensitive environmental areas near the growth areas from possible detrimental effects of increased urbanization; and maintains the historic integrity of a Baltimore County landmark. In sum, this proposed mixed-use PUD encompasses the intent of the zoning classification and the Baltimore County Master Plan 2010, and I find that the proposed development conforms to the stated goals of the Master Plan.

V. Modifications of Standards and Waivers of Public Works Standards

The Ballard Green PUD Development Plan requires Modifications of Standards and a request for Waivers of Public Works Standards. I accept and grant the requested Modifications of Standards and the requested Waivers of Public Works Standards in their complete form as referenced in the Office of Planning’s Final Report for Hearing Officer’s Hearing dated October

14, 2010 set forth as follows:

Modifications of Standards Requests:

1. RTA: To allow a maximum building height of up to 45 feet, in lieu of the allowed 35 feet in the 100-foot RTA for Lots 88, 89, and 90.. (per B.C.Z.R. Section 1B01.1.B.1.e. and Section 504.2, C.M.D.P. 2006, Part III, Division II).
2. RTA: To allow a minimum building setback to the tract boundary of 50 feet in lieu of 75 feet for Lot 88 (per B.C.Z.R. Section 1B01.1.B.1.e. and Section 504.2, C.M.D.P. 2006, Part III, Division II).
3. RTA: To allow clearing within the 50-foot buffer (per B.C.Z.R. Section 1B01.1B.e. and Section 504.2, C.M.D.P. 2006, Part III, Division II).
4. To allow a minimum front building setback to right-of-way or property line of 20 feet in lieu of 25 feet for garage townhouses (per B.C.Z.R. Section 1B01.2.C.1.c. and Section 504.2, C.M.D.P. 2006, Part III, Division II).
5. To allow a minimum front yard setback to an arterial road (Owings Mills Blvd.) for rear loaded townhouses of 25 feet in lieu of the required 45 feet (per B.C.Z.R. Section 1B01.2.C.1.c and Section 504.2, C.M.D.P. 2006, Part III, Division II).
6. To allow a minimum front building setback to right-of-way or property line of 10 feet in lieu of 15 feet for townhouses with parallel parking (per B.C.Z.R. Section 1.B01.2.C.1.c and Section 504.2, C.M.D.P. 2006, Part III, Division II).
7. To allow a minimum side building face to side building face setback of 15 feet in lieu of 25 feet (per B.C.Z.R. Section 1B01.2.C.1.c and Section 504.2, C.M.D.P. 2006, Part III, Division II).
8. To allow a minimum side building face setback to private road and/or a public right-of-way of 10 feet in lieu of 25 feet (per B.C.Z.R. Section 1B01.2.C.1.c and Section 504.2, C.M.D.P. 2006, Part III, Division II).
9. To allow a minimum rear building face setback of 20 feet in lieu of 30 feet (property line) (per B.C.Z.R. Section 1B01.2.C.1.c and Section 504.2, C.M.D.P. 2006, Part III, Division II).
10. To allow a maximum Open Projection into yards of up to 100% in lieu of the permitted 25% for decks and porches (per B.C.Z.R. Section 301.1.A).
11. To allow parallel parking on a public street to count towards the overall parking requirement (per B.C.Z.R. Section 409.1.A).
12. To allow up to 15 parking spaces in a row in lieu of 10 parking spaces for the Single-Family Attached (per B.C.Z.R. Section 409.8.A.1 and Baltimore County Landscape

Manual, Part III, Condition B).

13. To allow up to 8 single-family attached (townhome) units in a row or 176 feet, whichever is less, in lieu of the permitted 6 units or 180 feet (B.C.Z.R. Section 1B01.2.B.2 and Section 504.2, C.M.D.P. 2006, Part III, Division II).
14. To allow the garage door of the optional front entry garage townhouses, to constitute no more than 45% of the frontage of the individual unit. In those instances where the front entry garage width exceeds 45% of the total width of the dwelling front facade the use of divided garages, windows on garage doors, special door hardware that suggest a divided garage door, recessed garage, band on board, stone surrounds, and front porch may be requested by the Office of Planning. The model to be emulated is Snowden Overlook in Howard County. In those instances where the front entry garage width exceeds 45% of the total width of the dwelling front facade the final elevations must be approved by the Office of Planning (per B.C.Z.R. Section 260.6.B).
15. To allow a minimum rear yard space of up to 0 SF, in lieu of the required 500 SF (Section 504.2, C.M.D.P. 2006, Part III, Division II).
16. To allow a 5-foot wide panhandle in lieu of 10 feet where 3 or more lots are involved, for utility purposes (B.C.C. Section 32-4-409(b)(2)(iii) and B.C.Z.R. Section 504.2, C.M.D.P. 2006, Part III, Division II).
17. To allow the Townhouse garages to be credited toward the parking provided. Covenants will be created with a condition that townhouse garages cannot be converted to non-garage or storage use (per B.C.Z.R. Section 504.2, C.M.D.P. 2006, Part III, Division II).
18. To allow a minimum 15-foot building setback to a public right-of-way in lieu of the required 25 feet (per B.C.Z.R. Section 1B01.2.C.1.e and Section 504.2, C.M.D.P. 2006, Part III, Division II).
19. To allow 25-foot building face to building face setback in lieu of 60 feet (per B.C.Z.R. Section 1B01.2.C.1.e).
20. To allow 40-foot building side to building side setback in lieu of 30 feet plus one foot of setback per one foot of height to soffit line of tallest building (per B.C.Z.R. Section 1B01.2.C.1.e).
21. RTA: To allow a minimum 15-foot non-disturbance buffer in lieu of 50-foot buffer (per B.C.Z.R. Section 1.B01.1.B.1.e and Section 504.2, C.M.D.P. 2006, Part III, Division II).
22. RTA: To allow a 20-foot parking setback to the tract boundary in lieu of 75 feet (per B.C.Z.R. Section 1B01.1.B.1.e and Section 504.2, C.M.D.P. 2006, Part III, Division II).
23. RTA: To allow a building height of 76 feet in lieu of the permitted 35 feet (per B.C.Z.R. Section 1.B01.1.B.1.e and Section 504.2, C.M.D.P. 2006, Part III, Division II).

24. To allow a 76-foot Multi-family building height in lieu of the allowed 50 feet (per B.C.Z.R. Section 1B02.2.A and Section 504.2, C.M.D.P. 2006, Part III, Division II).
25. To allow up to 16 parking spaces in a row in lieu of 12 spaces (per B.C.Z.R. Section 409.8.A.1 and Baltimore County Landscape Manual, Part III Condition B).
26. To allow 12 parking spaces plus 19 on street parking in lieu of the required 1 parking space per 7 permitted persons (per B.C.Z.R. Section 409.6.A.4).
27. To allow a minimum 10-foot front setback in lieu of 50 feet (per B.C.Z.R. Section 1B01.2.C.1.a and Section 504.2, C.M.D.P. 2006, Part III, Division II).
28. To allow a minimum 5-foot corner side yard in lieu of 35 feet (per B.C.Z.R. Section 1B01.2.C.1.a. and Section 504.2, C.M.D.P. 2006, Part III, Division II).
29. To allow a minimum 10-foot rear yard in lieu of 30 feet (per B.C.Z.R. Section 1B01.2.C.1.a and Section 504.2, C.M.D.P. 2006, Part III, Division II).
30. To allow non-residential principal buildings (Community Building/Pool and Live/Work units) in a D.R. Zone in lieu of a Special Exception (per B.C.Z.R. Section 1B01.C.4).
31. To allow a 60-foot Live/Work unit building height in lieu of the allowed 50 feet (per B.C.Z.R. Section 1B02.2.A and Section 504.2, C.M.D.P. 2006, Part III, Division II).
32. To allow a community sign of 100 SF in lieu of 25 SF to be located at the intersections of roads 'X' and Lyons Mill Road, 'X' and Owings Mills Blvd., 'Y' and Lyons Mill Road, and 'Z' and Lyons Mill Road (per B.C.Z.R. Section 450.4).
33. To allow the height of a community sign of 8 feet in lieu of 6 feet to be located at the intersections of roads 'X' and Lyons Mill Road, 'X' and Owings Mills Blvd., 'Y' and Lyons Mill Road, and 'Z' and Lyons Mill Road (per B.C.Z.R. Section 450.4).
34. To allow signage consistent with that permitted in the B.L. Zone for the Live/Work units and the existing historic house (per B.C.Z.R. Section 450).
35. To allow 521 dwelling units (single-family attached units and multi-family units) in lieu of the maximum permitted density (431 dwelling units) under the property's zoning classification. This Modification has been authorized by the Baltimore County Council through Resolution No. 4-10 pursuant to Baltimore County Code Section 32-4-242(c)(2).
36. To allow a 16 to 20-foot two way travel aisle with 90 degree parking for the alleys in lieu of the required 22-feet (per B.C.Z.R. Section 409.4.C).
37. To allow all uses permitted in the Business, Local (B.L.) Zone to occur within the Live/Work units (per B.C.Z.R. Section 230).

38. To allow a 20% reduction to the parking requirements for the Live/Work uses and Historic House uses because the off-street parking spaces will be shared in a common parking facility. The Shared Parking Adjustment code section states 'The Director of the Department of Permits and Development Management shall determine the percentage of parking spaces required for each of the five time periods on a case by case basis, depending on the existing and planned weekday and weekend activities'. (per B.C.Z.R. Section 409.6.B.3).
39. To allow a 70% reduction to the Local Active Open Space landscape requirement for the athletic field area located in Parcel J (per Baltimore County Landscape Manual, Section III.R).
40. Such other modifications as may be identified by or in response to County agency or community comments.
41. On 9/29/2010, the Zoning Supervisor stated that the Director of Permits and Development Management has instructed that the chart for the Modification of Standards is not required for the Development and Final Development Plans.

Waiver of Public Works Standards Requests:

1. Waiver to permit 28 foot paving width on a 50 foot right-of-way in lieu of the standard 30 foot paving width on a 50 foot right-of-way for Roads X, Y, and Z. Waiver to revise plate #R-12 to allow 6 foot wide sidewalk and 5 foot wide grass strip on both sides of the road in lieu of a 4 foot wide sidewalk and 6 foot wide grass strip. Parking is proposed along one side of the road.
2. Waiver to permit 24 foot paving width on a 46 foot right-of-way in lieu of the standard 30 foot wide paving width on a 50 foot right-of-way for Roads B, D-1, D-2, F, G, H-1, H-2, and H-3. Waiver to allow 5 foot wide sidewalk on both sides of the road in lieu of a 4 foot wide sidewalk and 2 foot wide grass strip with the exception of Road D-1 where a sidewalk will only be provided on one side of the road section. Parking is proposed along one side of the road unless identified as a no parking area on the development plan.
3. Waiver to allow special paving in the form of stamped concrete in lieu of asphalt on public roads at primary road intersections X, Y, and Z with Lyons Mill Road, Road X with Owings Mills Blvd., and within the round-about as designated on the PUD Development Plan.
4. Waiver to permit 28 foot paving width on a 50 foot right-of-way in lieu of the standard 30 foot paving width on a 50 foot right-of-way for road K-1. Waiver to revise plate #R-12 to allow a 5 foot wide sidewalk and 6 foot wide grass strip on both sides of the road in lieu of a 4 foot wide sidewalk and 6 foot wide grass strip. Parking is proposed along one side of the road.

The community benefit proposed by the Ballard Green PUD, as acknowledged by the Baltimore County Council in Resolution No. 4-10, is the site for dedication to Baltimore County for utilization as an elementary school. Pursuant to B.C.C. Section 32-4-245(b)(3)(iii), and in light of the testimony and evidence presented at the October 14, 2010 hearing, in conjunction with the comments from the Baltimore County reviewing agencies, I accept the community benefit as proposed.

VI. Conclusion

After due consideration of the testimony and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from the various County offices and agencies that the redlined/greenlined/bluelined PUD Development Plan with a revision date of 10/28/10 satisfies those agencies' requirements, I find that the redlined/greenlined/bluelined PUD Development Plan, marked and accepted into evidence as Developer's Exhibit 5, is in compliance with the Baltimore County Code and all applicable policies, rules, and regulations. Therefore, having identified no unresolved or outstanding issues that would prevent approval of the PUD Development Plan, the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the redlined/greenlined/bluelined PUD Development Plan, submitted as Developer's Exhibit 5.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Article 32, Title 4, of the Baltimore County Code, the advertising of the property and public hearing held thereon, the redlined/greenlined/bluelined PUD Development Plan, submitted as Developer's Exhibit 5, shall be approved.

THEREFORE, IT IS ORDERED by this Hearing Officer for Baltimore County this 12th day of January, 2011 that the 13-page redlined/greenlined/bluelined PUD Development Plan with a revision date of 10/28/10, collectively marked and accepted into evidence as Developer's Exhibit 5, be and is hereby **APPROVED**.

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

SIGNED
THOMAS H. BOSTWICK
Hearing Officer/Deputy Zoning Commissioner
for Baltimore County

THB:pz