

IN RE: PLANNED UNIT DEVELOPMENT	*	BEFORE THE
N/S Burke Avenue, S/S Susquehanna		
Avenue, E York Road	*	OFFICE OF
(Towson Manor – 2nd Amended		
Development Plan)	*	ADMINISTRATIVE HEARINGS
9 th Election District		
5 th Election District	*	FOR BALTIMORE COUNTY
Bozzuto Homes, Inc.	*	Case No. IX-805
<i>Applicant/Developer</i>		

* * * * *

HEARING OFFICER’S ORDER REGARDING PUD DEVELOPMENT PLAN

This matter comes before the Office of Administrative Hearings for a hearing pursuant to Section 32-4-245 of the Baltimore County Code (B.C.C.). In accordance with the development regulations codified in B.C.C. Article 32, Title 4, the Developer seeks approval of a 2nd Amended Development Plan (the “Plan”) prepared by Morris & Ritchie Associates, Inc., for the addition of two (2) semi-detached dwellings (units 119 and 120) and one (1) single-family detached dwelling (unit 121). This will result in a revised total unit count of 114 single-family attached (townhomes), six (6) semi-detached (duplex) and one (1) single-family detached dwelling units together with a 92-bed Assisted Living Facility III (the “subject property”) on approximately 9.94 acres, more or less, zoned D.R.16. The property is more particularly described on the 2nd Amended Development Plan submitted into evidence and marked as Developer’s Exhibit 1A-E.

The subject property is located in the Towson area north of Burke Avenue, south of Susquehanna Avenue and east of York Road, as more particularly described on the Development Plan. The Developer received approval previously for the construction of 118 residential units (114 single-family attached units and 4 semi-detached units) and a 92-bed assisted living facility.

The Developer proposed to construct additional dwellings, which Baltimore County deemed a “material amendment” to the earlier Plan, requiring a Development Plan Conference and a hearing in the Office of Administrative Hearings.

A Development Plan Conference (DPC) was held between the Developer’s consultants and various Baltimore County agencies, to consider the amended development proposal. In this case, the DPC was held on July 27, 2011. At the DPC, the Baltimore County agencies responsible for the review of the Development Plan submit written comments regarding the compliance of the Development Plan with the various Baltimore County regulations governing land development in the County. The Hearing Officer’s Hearing was held before me on August 18, 2011.

Appearing at the public hearing on behalf of the Developer were Clark Wagner with Bozzuto Homes, Inc. and Michael G. Coughlin, PE, LEED AP, with Morris & Ritchie Associates, Inc., the engineering firm that prepared the Plan. Patricia A. Malone, Esquire with Venable, LLP entered her appearance as counsel for the Developer.

Several citizens attended the hearing to observe the proceedings, but indicated they did not oppose Developer’s request. They were: Paul Hartman, John McGrain and Elizabeth Clifford. Andrew Jiranek, Esquire attended the hearing and expressed some concern over access and ingress/egress issues involving a parcel of land and building he owns which adjoins the subject property. He indicated he has entered into some sort of contractual arrangement with the Developer which addresses these issues, but as mentioned at the hearing, this Office is not authorized to construe or interpret a private contract, unless it is expressly incorporated into a Hearing Officer’s Order. *See Blakehurst Life Care v. Baltimore County*, 146 Md. App. 509, 519-20 (2002).

Representatives of the various Baltimore County agencies who reviewed the Plan attended the hearing, including the following individuals: Jeffrey Perlow, representative of the Office of Zoning Review; Dennis A. Kennedy, Development Plans Review; and Gigi Hampshire, Real Estate Compliance. Also appearing on behalf of the County were Lloyd Moxley, Office of Planning; David Lykens, Department of Environmental Protection and Sustainability (DEPS), and Bruce Gill, Department of Recreation and Parks (R&P)/Development Plans Review (DPR). Don W. Muddiman, Baltimore County Fire Marshall's Office, did not appear at the hearing but filed a three page memorandum with comments, dated July 14, 2011. Steven D. Foster, Chief of Engineering Access Permits Division of the State Highway Administration, by letter dated July 15, 2011, indicated the SHA had no objection to the project. All Baltimore County representatives indicated – during the “informal” phase of the case – that the amended Development Plan satisfied all Baltimore County rules and regulations, and their agencies recommended approval of the Plan.

DEVELOPER'S CASE

At the outset of Developer's case, Ms. Malone indicated her client acquired certain parcels of land on Willow and Burke Avenues, which was the catalyst for the filing of the 2nd Amended PUD Development Plan. As noted earlier, three additional dwellings are proposed, and the assisted living facility as shown on the original Development Plan will remain unchanged. Ms. Malone suggested, and I concur, that Mr. Wiseman's prior factual findings (set forth in the Opinion dated February 23, 2010, in Case No. IX-805) are equally applicable in this setting which proposes a modest amendment, and they are therefore adopted and incorporated herein by reference.

The Developer next presented its case-in-chief, and called Michael Coughlin as its

witness. Mr. Coughlin is a professional engineer, and indicated he was intimately familiar with the Plan, and testified that in his opinion it satisfied all Baltimore County rules and regulations. Mr. Coughlin also explained that the Developer's acquisition of the additional parcels mentioned above allowed for the reconfiguration and reduction in size of the retaining walls in those areas, which will be much more aesthetically pleasing and favored by the community.

The Baltimore County Code (Section 32-4-245(c)) sets forth the following standards which must be satisfied before a PUD Development Plan can be approved:

- c) *Basis for approval.* The Hearing Officer may approve a proposed PUD development plan only upon finding that:
 - (1) The proposed development meets the intent, purpose, conditions, and standards of this section;
 - (2) The proposed development will conform with Section 502.1.A, B, C, D, E and F of the Baltimore County Zoning Regulations and will constitute a good design, use, and layout of the proposed site;
 - (3) There is a reasonable expectation that the proposed development, including development schedules contained in the PUD development plan, will be developed to the full extent of the plan;
 - (4) Subject to the provisions of § 32-4-242(c)(2), the development is in compliance with Section 430 of the Baltimore County Zoning Regulations; and
 - (5) The PUD development plan is in conformance with the goals, objectives, and recommendations of the Master Plan, area plans, or the Office of Planning.

In this case, the Developer's submission satisfies each of these elements. The proposed development is of a high quality with attractive designs, and the president of the Aigburth Manor Community Association, Paul Hartman, indicated the neighborhood supports the Plan. The Plan contains five sheets providing a great amount of detail, including the proposed landscaping scheme. The project will not in any way overcrowd the area or pose concerns for the safety and welfare of the community, and I find that it therefore satisfies the "special exception" elements incorporated into B.C.C. Section 32-4-245(c)(2).

The Developer (Bozzuto Homes) is well known and has completed many attractive and well designed residential projects in Baltimore County, and there is thus a “reasonable expectation” it will bring this development to fruition. Finally, the Development Plan is in compliance with Section 430 of the B.C.Z.R., governing PUDs, and is also in compliance with the Master Plan and the comments of the Office of Planning (set forth in its report dated July 27, 2011), thereby satisfying B.C.C. Section 32-4-245(c)(4) & (5).

Pursuant to the zoning and development regulations of Baltimore County and Article 32, Section 4 of the B.C.C., the Development Plan (Developer’s Exhibit 1A-E) shall be approved consistent with the comments contained herein and the enumerated conditions.

THEREFORE, IT IS ORDERED by this Hearing Officer/Administrative Law Judge this 9th day of September, 2011, that the 2nd Amended Development Plan for **TOWSON MANOR PLANNED UNIT DEVELOPMENT** identified herein as Developer’s Exhibit 1A-E, be and is hereby APPROVED.

This approval is expressly conditioned upon Developer’s compliance with the comments of the Fire Marshal (dated July 14, 2011) and the Office of Planning (dated July 27, 2011).

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

JEB/dlw

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County