

IN RE: PLANNED UNIT DEVELOPMENT	*	BEFORE THE
(9655 Belair Road)		
E of the intersection of Belair Road	*	OFFICE OF
and Chapel Road		
11 th Election District	*	ADMINISTRATIVE HEARINGS
5 th Councilmanic District		
	*	FOR
(Brightview Perry Hall)		
	*	BALTIMORE COUNTY
Shelter Development, LLC.,		
<i>Developer</i>	*	CASE NO. 11-1114

* * * * *

ADMINISTRATIVE LAW JUDGE’S OPINION AND ORDER ON PLANNED UNIT DEVELOPMENT (PUD)

This matter comes before the Office of Administrative Hearings (OAH) for a hearing pursuant to Section 32-4-227 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 Development Plan (the "Plan") prepared by Morris & Ritchie Associates, Inc., for the proposed development of Brightview Perry Hall (the "subject property"). The proposed development is more particularly described on the five-sheet redlined Plan submitted into evidence and marked as Developer's Exhibits, 2A-2E.

The Developer proposes a two-phased Senior Housing General Development Planned Unit Development (PUD) comprising 165 (phase I) residential dwelling units containing independent living, assisted living and Alzheimer’s care units with associated parking situated on 14.89+/- acres of land zoned DR 3.5H. If the project is approved, the Developer anticipates that construction will begin in 2013 and be completed in 2014. Phase II will consist of an additional building of 60 units, for a total build-out of 225 units. The site is situated 1,400' more or less to the east of the intersection of Belair and Chapel Roads. The site is currently unimproved with an open field type

setting. There is a stream, wetlands and an existing storm water management pond at the rear of the property.

A Development Plan Conference (DPC) was held between the Developer's consultants and various Baltimore County agencies, to consider the project. In this case, the DPC was held on June 6, 2012. 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 June 28, 2012.

Appearing at the public hearing on behalf of the Developer were Andrew Teeters and Bryan Burnette with the Shelter Group, Cynthia Shonaiya with Hord Coplan Macht, Michael Coughlin with Morris & Ritchie Associates, Inc., the engineering firm that prepared the Plan, and Mark Keeley with The Traffic Group. Scott Barhight, Esquire and Adam Baker, Esquire, both with Whiteford, Taylor & Preston, appeared as counsel for the Developer. Several residents of the surrounding community attended as interested citizens and signed in on the Citizens Sign-In Sheet which is contained within the case file.

Representatives of the various Baltimore County agencies who reviewed the Plan attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections (PAI): Darryl Putty, Project Manager; Jeff Perlow, representative of the Office of Zoning Review; Dennis A. Kennedy, Development Plans Review (DPR); and Brad Knatz, Real Estate Compliance. Also appearing on behalf of the County were Curtis Murray, Department of Planning; Jeffrey Livingston, Department of Environmental Protection and Sustainability (DEPS), and Bruce Gill, Department of Recreation and Parks (R&P)/Development Plans Review (DPR). All Baltimore County representatives (with the exception of Mr. Livingston of DEPS, discussed

below) indicated – during the “informal” phase of the case – that the redlined Development Plan (Exhibits 2A-2E) satisfied all Baltimore County rules and regulations, and their agencies recommended approval of the Plan.

Given the pivotal role played by the Department of Planning, Mr. Murray’s comments were more extensive than those provided by other County reviewers. Specifically, Mr. Murray discussed each of the aspects reviewed by his agency, and concluded as follows:

1. School Impact Analysis (waived, given this is an age-restricted community);
2. Performance standards under B.C.Z.R. § 260 (Plan is consistent with these regulations);
3. Modification of standards (the Department of Planning does not oppose the modifications sought by the Developer);
4. Open space (Department of Planning does not oppose the open space fee in lieu waiver, introduced by Mr. Gill as Baltimore County Exhibit 1);
5. Pattern Book (Department of Planning has reviewed and approved the Developer’s Pattern Book, admitted and marked as Exhibit 1);
6. Master Plan (Department of Planning concurs with the “neighborhood” defined by Developer, and that agency advised the Plan is consistent with the 2020 Master Plan and compatible with the neighborhood);

Mr. Murray concluded by recommending approval of the Plan.

Mr. Livingston indicated DEPS had just recently received from the Developer preliminary stormwater management documents, and he advised staff would need additional time to review the submissions. The record in this case was left open for this purpose, and on July 13, 2012 the undersigned received notification from Edward Schmaus (with DEPS) that the stormwater

management information satisfied Baltimore County standards, and he recommended approval of the project.

DEVELOPER'S CASE

In his preliminary remarks, Mr. Barhight noted that this was a first-of-its-kind case, in that this PUD complied with the recent amendments requiring community meetings and initial County review prior to obtaining a County Council resolution. Mr. Barhight also stressed that approval was being sought for 225 “dwellings,” and wanted to avoid any confusion (encountered in other cases of this nature) over the distinct concept of “density” units.

The first witness in Developer’s case was Andrew Teeter, the project manager for the Developer, Shelter Communities. Mr. Teeter explained in general terms the senior housing project proposed, and he stressed that Shelter Communities has a great deal of experience in owning and operating these facilities; they have four similar communities in Baltimore County, and many more throughout the State. Mr. Teeter explained that there is a significant demand for senior housing in the Perry Hall area, and he said seniors prefer to “age in place,” which he described as being within three to five miles of their home.

Mr. Teeter indicated the facility will encourage socialization for its senior residents, and he outlined the many amenities and activities that will be provided on site. Mr. Teeter said that the Developer engaged early in the process with the surrounding neighborhoods and the Perry Hall Improvement Association. The primary concerns expressed by the community related to vegetative buffering, appropriate architectural style of buildings, and non-glare light fixtures. The Developer has addressed each of these issues to the community’s satisfaction, which is borne out by the lack of any opposition to the project.

The next witness was Michael Coughlin, a professional engineer who was accepted as an expert in land use matters and the Baltimore County development and zoning regulations. Mr. Coughlin testified he was responsible for preparation of the Plan (Exhibit 2), Pattern Book (Exhibit 1) and site rendering (Exhibit 3). Mr. Coughlin opined that, as outlined in the Pattern Book, the Developer's proposal satisfies each of the special exception standards set forth in B.C.Z.R. § 502, and he also opined that the project will be developed to the full extent of the plan. Finally, Mr. Coughlin opined that the development proposal complies with B.C.Z.R. § 430, and that the project was compatible with the applicable Master Plan(s).

The Hearing Officer can approve a PUD Development Plan only upon finding:

- (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 Department of Planning.

B.C.C. § 32-4-245(c)(1)-(5).

In this case, the Developer presented uncontroverted evidence establishing each of these elements. Mr. Murray of the Department of Planning testified the PUD Development Plan was in conformance with the Master Plan and that it also satisfied the compatibility requirements of the County Code. Mr. Coughlin testified that he was very familiar with the Developer's projects in the County, and believed the development would be completed to the full extent of the Plan, so B.C.C. § 32-4-245(c)(3) is satisfied. Finally, Mr. Coughlin testified the project satisfied the B.C.Z.R. § 502 special exception requirements, complied with B.C.Z.R. § 430 (governing PUDs) and met the intent and standards set forth in the B.C.C. and B.C.Z.R. In light of this testimony, and given the support of the community groups in the area, the PUD Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Hearing Officer/Administrative Law Judge this 18 day of July, 2012, that the Development Plan identified herein as Developer's Exhibits 2A-2E, be and is hereby APPROVED;

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

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

JEB/pz