IN RE**: PETITION FOR SPECIAL HEARING** **(19 Warren Park Dr)** 3rd Election District 2nd Councilmanic District Milford Apartments I, LLC Petitioner	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2013-0193-SPH**

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ORDER ON MOTION FOR RECONSIDERATION

Protestants have filed on June 3, 2013 a motion to reconsider the May 6 Order in the above case. The first portion of the motion contends that the ALJ erred by granting the special hearing relief and confirming that a "zoning subdivision" existed. As noted at the hearing, and in the Order, it is unclear whether such a doctrine exists under Maryland or Baltimore County law. But the granting of the relief on this point was tantamount only to recognizing that the property is in fact split-zoned, as discussed on page 3 of the Opinion. Stated otherwise, the words "zoning subdivision" were coined by the Petitioner, and do not, in and of themselves, have legally operative significance. Thus, I think the Protestants are emphasizing semantics over substance.

As noted in the Opinion, I did not conclude that "Parcel 3" had been lawfully subdivided under the pertinent County subdivision regulations. Nor did I find that a "de facto" subdivision had occurred, although cases were cited from other jurisdictions where such a concept has been recognized. The Council's rezoning of "Parcel 3" in the last CZMP was a pivotal event, and legal consequences flow from that action. One of those is that "Parcel 3" has a different zoning classification from the remainder of the lot, a scenario that is often encountered since there is no requirement that lot lines and zoning boundary lines coincide. The special hearing relief on this aspect merely acknowledged this state of affairs.

The second issue raised by Protestants concerns the special hearing relief allowing all permitted uses on the M.L. zoned land. The Protestants fear that such inquiries (i.e., "what uses are allowed on this land?") will "open the floodgates." But it seems to me that Section 500.7 of the BCZR expressly permits such inquiries. Indeed, among other things, that regulation allows citizens to request a hearing "to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations." BCZR § 500.7.

The Protestants, as did Petitioner's engineer at the hearing, next discuss the permitted density of the overall parcel, and contend that "if parcel 3 had retained its previous DR5.5 zoning, residential development would not have been allowed, without a variance," since, according to Protestants, the apartment complex is already above allowed density. While that may be true, it is beside the point (since it would constitute a lawful nonconforming use in any event), and the property was rezoned. And under the ML zoning regulations, "density" is not provided and residential dwellings are not permitted in any event, so any discussion of density is inapposite in these circumstances.

Protestants' final argument on this point makes reference to Mr. Zimmerman's letter dated April 11, 2013, concerning whether or not "parcel 3" in the "original plan" had been designated or envisioned as a buffer area or open space. Any discussion in this regard is complicated by the fact that, as Protestants note, the Petitioner did not produce at the hearing a copy of the plan whereby the apartment complex was approved. But as I noted at the hearing, the zoning regulations at this time (1963 edition) provided local open space requirements for most "residence" zones (Sections 202, 205, 208 and 211 of 1963 BCZR) but not for apartments in the R.A. zone (although the regulations in Section 217.5 did provide setback requirements between the apartment buildings themselves). Even assuming for sake of argument that the land comprising "parcel 3" was shown

as a buffer or open space on the original plan approved in the 1960s, I believe the Petitioner would nonetheless be able to avail itself of the M.L zoning, which was enacted in 2012. This legislation—if not the intervening roadway improvements which in and of themselves radically altered the land use which would have been depicted on the original plan—was enacted only after adequate procedural due process safeguards, and would "amend" by operation of law any earlier plan that was inconsistent therewith.

In light of the foregoing, the Protestants' motion will be denied.

THEREFORE, IT IS ORDERED, this **11th** day of June, 2013 by the Administrative Law Judge for Baltimore County, that the Motion for Reconsideration be and is DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

_____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln