

RE: PLANNED UNIT DEVELOPMENT & PETITION FOR SPECIAL HEARING	*	BEFORE THE
S end of Forest Avenue, 1,050' S of Edmondson Avenue	*	OFFICE OF
1 st Election District	*	ADMINISTRATIVE HEARINGS
1 st Councilmanic District	*	FOR BALTIMORE COUNTY
(Eden Terrace PUD/Alternate PUD)	*	
SK Homes at Eden Terrace, LLC	*	Case No. 01-536 and
<i>Applicant/Developer</i>		Zoning Case No. 2011-0359-SPH

* * * * *

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

This matter comes before the Office of Administrative Hearings 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 D.S. Thaler & Associates, Inc., for 23 single-family lots (the “subject property”) on approximately 6.46 acres, more or less, zoned D.R. 3.5 and D.R. 5.5.

The Developer is also requesting certain zoning relief and has filed a Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for:

- The alternative layout of "The Villas at Eden Terrace" PUD Development Plan previously approved in Case No. I-536 by Deputy Zoning Commissioner Thomas H. Bostwick's Hearing Officer's Review and Approval Order dated November 9, 2007 in accordance with B.C.Z.R. Section 430 and Baltimore County Code (B.C.C.) Section 32-4-241, et seq;
- The material amendment to a residential Development Plan (PDM I-536) in accordance with B.C.C. Section 342-4-262(2);
- The applicability of the special variance approval in Case No. 08-349-SA to the alternative layout of the prior PUD Approval; and
- For such other and further relief as the Administrative Law Judge may require.

The subject property is located in the Catonsville area near the Beltway, and more particularly described on the Plan submitted into evidence and marked as Developer's Exhibit 1. As noted above, the Developer received approval previously for the construction of 23 villa-style homes and in this proceeding seeks to amend the Plan and construct 23 single-family homes. Baltimore County considered this to be a "material amendment" to the earlier Plan, and informed the Developer it would need to conduct another DPC, followed by a hearing in this Office.

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 6, 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 July 28, 2011.

Appearing at the public hearing on behalf of the Developer were Chuck Krockner and Maureen Nicholas with SK Homes, Stacey McArthur, Mark Vaszil and David Thaler with David Thaler & Associates, the engineering firm that prepared the Plan. Lawrence E. Schmidt, Esquire with Smith, Gildea & Schmidt, LLC entered his appearance as counsel for the Developer.

Appearing in opposition to the Developer's request were Paul M. Blair Jr., Teresa Stallings, Sherian Seubott and Stephen and Elizabeth Power.

Representatives of the various Baltimore County agencies who reviewed the Plan attended the hearing, including the following individuals: Darryl Putty, Project Manager; John Lewis, 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 Jenifer Nugent, 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). Also attending was Cathy Engers, Council Aide to Councilman Thomas Quirk. Don W. Muddiman, Baltimore County Fire Marshall's Office and Steven D. Foster, Chief of Engineering Access Permits Division of the State Highway Administration, were represented at the hearing through prior correspondence. 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

The Developer next presented its case-in-chief, and called Stacey McArthur as its first witness. Ms. McArthur is a registered landscape architect, and indicated she was intimately familiar with the Plan, and testified that in her opinion it satisfied all Baltimore County rules and regulations.

The next witness was David Thaler, a professional engineer with 36 years experience. Mr. Thaler testified the Plan satisfied all Baltimore County rules and regulations, and also opined that the amended Plan – with single family homes – would generate no additional traffic beyond that forecasted in the prior Plan. As such, Mr. Thaler opined that the special variance relief granted by former Deputy Zoning Commissioner Bostwick was applicable to this Plan, and that the development would have little or no impact upon the failing intersection (Frederick Road and Ingleside Avenue) that necessitated special variance relief. See Developer's Exhibit 4 (Order in Case 08-349-SA). I am inclined to agree, and find that the special variance relief granted in Case No. 08-349-SA is applicable to this proceeding and the amended development plan.

COMMUNITY MEMBERS

Several members of the community attended the hearing, and expressed concern with noise, increased traffic and roadway safety issues. The subject property has remained undeveloped for many years, and it is understandable neighbors would balk upon learning 23 new homes will be

constructed on that vacant lot.

While I am sympathetic to their concerns, I am nonetheless obliged to apply County laws and regulations in my review of plans. In this case, the underlying zoning provides for the number of housing units sought by Developer, and the PUD process does not yield any “density bonus” in this case. The State Highway Administration reviewed the Plan, and Steven D. Foster, Chief of the Access Management Division, opined that the “number [of] vehicle trips generated by this development appear to have negligible impact to State road network.” In addition, all County agencies recommended approval of the Plan, and in those circumstances the law provides that the Plan “shall” be approved. B.C.C. Section 32-4-229(b). As noted by the Court of Special Appeals, in “this stage of the [Baltimore County] development plan review process, the development plan is deemed code-compliant in the absence of evidence to the contrary.” People’s Counsel v. Elm Street Dev., Inc., 172 Md. App. 640,703(2007).

OPEN SPACE ISSUE

One final issue arose in the case, concerning the open space requirements imposed by Baltimore County law. The Developer is providing adequate “passive” open space, and was granted approval for a fee-in-lieu with respect to the “active” open space. The amount of the waiver fee is \$78,420.23, as shown in Baltimore County Exhibit 3. The Developer argued that former Recreation and Parks Director Robert Barrett reduced the fee to \$20,500.00, in recognition of certain neighborhood improvements proposed by Developer. Mr. Gill, however, indicated that Baltimore County rules and regulations do not permit such a reduction here, and the waiver fee is thus \$78,420.23, and that money must be spent on improvements and park land acquisition in the Councilmanic district where the development is proposed. B.C.C. Sections 32-6-108; 10-6-103.

CONVEYANCES TO STALLINGS/BLAIR

Paul M. Blair (112 Forest Avenue) and Teresa Stallings (111 Forest Avenue) attended the

public hearing in this case. Mr. Blair's property adjoins proposed lot #12 and Ms. Stalling's home adjoins proposed lot #1 on the Plan. Both expressed concern over a strip of land between their homes and the Developer's parcel, and Mr. Thaler testified that the property in question had a complex and convoluted title history. To eliminate any doubt or the need for a quiet title action, the Developer agreed, upon plat recordation, to convey a parcel of land to the Stallings (shown on the Plan as "Proposed Parcel A 1,919 S.F.+/- (non-density)"). The Developer also proposes to convey a parcel of land to the Blairs (shown on the Plan as "Proposed Parcel C 743 SF +/- (non-density)"). Development Plan approval will be expressed conditioned upon these conveyances to the Stallings and Blairs, assuming they choose to accept same. The conveyances will be at no cost to the Stallings and Blairs.

The Baltimore County Code (Section 32-4-228) is clear regarding the standards that must be applied when the Hearing Officer considers a development plan. The Hearing Officer must approve a plan that satisfies the rules, regulations and policies adopted by Baltimore County regarding development. Based upon the testimony and evidence presented, I find that the Plan as submitted at the hearing and accepted as Developer's Exhibit 1 meets all County rules, regulations and standards for development in Baltimore County and, therefore, must be approved.

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 1) 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 18 day of August, 2011, that the three sheet redlined Development Plan for **EDEN TERRACE** identified herein as Developer's Exhibits 1A, 1B and 1C, be and is hereby APPROVED;

IT IS FURTHER ORDERED that the Special Hearing petition filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) seeking approval for:

- The alternative layout of "The Villas at Eden Terrace" PUD Development Plan previously approved in Case No. I-536 by Deputy Zoning Commissioner Thomas H. Bostwick;
- The material amendment to a residential Development Plan (PDM I-536) in accordance with B.C.C. Section 32-4-262(2); and
- The applicability of the special variance approval in Case No. 08-349-SA to the alternative layout of the prior PUD Approval,

be and is hereby GRANTED.

The Development Plan approval is expressly conditioned upon Developer’s conveyance (upon record plat approval) to the Stallings and Blairs of Proposed Parcels A and C as shown on the Plan.

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

JEB/pz

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County