

IN RE: DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING

W side of Kenwood Avenue; 382 feet S of North Avenue
(5705 Kenwood Avenue)
14th Election District
6th Councilmanic District
(5705 Kenwood Avenue Property)

Stonewall Development
Applicant/Developer

* BEFORE THE
* HEARING OFFICER
* FOR
* BALTIMORE COUNTY
*
* **HOH Case No. 14-480**
* **Zoning Case No. 2011-0018-SPH**

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HEARING OFFICER’S COMBINED ZONING RELIEF AND DEVELOPMENT PLAN OPINION ORDER

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for Baltimore County for a public hearing on a development proposal submitted in accordance with the development review and approval process contained in Article 32, Title 4, of the Baltimore County Code (“B.C.C.”) and a related zoning Petition for Special Hearing. Stonewall Capital, LLC, the developer of the subject property (hereinafter “the Developer”), submitted for approval a redlined Development Plan prepared by DeMario Design Consultants, known as the “5705 Kenwood Avenue Property” and Plan to Accompany Petition for Special Hearing (hereinafter referred to collectively as the “redlined Development Plan”) for property located on the west side of Kenwood Avenue, 382 feet south of North Avenue in the Overlea area of Baltimore County.¹ The Developer proposes to develop 26 single-family attached townhomes on 5.1 acres, more or less, zoned DR 3.5 (0.8 acre) and DR 5.5 (4.3 acres).

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.”) to

¹ The property was previously known as the “Patrick S. Craig Property” with the same property address as above; however, subsequent to filing the development proposal, the property was foreclosed on by the lending bank, Mid State Federal S&L Assn., and is now owned by that entity.

approve the accrual of density on a tract split zoned D.R.3.5 and D.R.5.5 in order to permit the development of 26 townhomes, notwithstanding B.C.Z.R. Section 1B01.2.A.2 and the restrictions contained therein.

The property was posted with the Notice of Hearing Officer's Hearing on August 1, 2010 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing. In addition, notice of the zoning hearing was timely posted on the property on August 1, 2010 and was timely published in *The Jeffersonian* in accordance with the County Code.

Pursuant to this process, a concept plan of the proposed development was prepared and a Concept Plan Conference ("CPC") was held on December 12, 2009 at 11:00 AM in the County Office Building. As the name suggests, the concept plan is a schematic representation of the proposed development and was initially reviewed by representatives of the Developer and the reviewing County Agencies at the CPC. Thereafter, as was also required in the development review process, notice of a Community Input Meeting ("CIM") was posted and scheduled during evening hours at a location near the proposed development. The CIM would provide residents of the area an opportunity to review and comment firsthand on the Concept Plan. In this case, the CIM was held on February 18, 2010 at 7:00 PM at the Kenwood High School located at 501 Stemmers Run Road, and a second CIM was held on March 4, 2010 at 7:00 PM at the Overlea High School located on Kenwood Avenue, where representatives of the Developer and the County attended, as well as a number of interested persons from the community. Subsequently, a Development Plan was prepared based upon the comments received at the CPC and the CIM, and the Development Plan was submitted for further review at a Development Plan Conference ("DPC"). At the DPC, the Developer's consultants and County agency representatives further

reviewed and scrutinized the plan. The DPC occurred on July 7, 2010 at 9:00 AM in the County Office Building. Thereafter, a Hearing Officer's Hearing was held to consider this proposal on August 26, 2010 in Room 106 of the County Office Building located at 111 West Chesapeake Avenue in Towson.

Appearing at the requisite public hearing in support of the Development Plan and request for zoning relief on behalf of both the Developer and the legal owners were Ray Jackson with Stonewall Capital, LLC, and Joseph R. Woolman, Esquire attorney for the Developer. Also appearing in support was Andrew Stine, landscape architect with DeMario Design Consultants. Appearing as interested citizens were Roger Haack of 5703 Kenwood Avenue, David Ordanza of 5615 Kenwood Avenue, Tom Paglia of 5709 Kenwood Avenue, and Jeffrey Williams of 5710 Kenwood Avenue.

Numerous representatives of the various Baltimore County agencies, who reviewed the Amended Development Plan and zoning Petition, also attended the hearing, including the following individuals from the Department of Permits and Development Management: Colleen Kelly (Project Manager), Dennis Kennedy (Development Plans Review), Bruno Rudaitis (Office of Zoning Review), and Brad Knatz (Bureau of Land Acquisition). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Resource Management ("DEPRM"); Jenifer Nugent from the Office of Planning; and Bruce Gill from the Department of Recreation and Parks. In addition, written comments were received from the Baltimore County Fire Marshal's Office and the Maryland State Highway Administration. These and other agency remarks are contained within the case file.

It should be noted at this juncture that the role of the reviewing County agencies in the development review and approval process is to perform an independent and thorough review of

the Development Plan as it pertains to their specific areas of concern and expertise. The agencies specifically comment on whether the plan complies with all applicable Federal, State, and/or County laws, policies, rules and regulations pertaining to development and related issues. In addition, these agencies carry out this role throughout the entire development plan review and approval process, which includes providing input to the Hearing Officer either in writing or in person at the hearing. It should also be noted that continued review of the plan is undertaken after the Hearing Officer's Hearing during the Phase II review of the project. This continues until a plat is recorded in the Land Records of Baltimore County and permits are issued for construction.

Pursuant to Sections 32-4-227 and 32-4-228 of the B.C.C., 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. Upon inquiry of the Developer's attorney, Mr. Woolman, he indicated that there were still some outstanding DEPRM issues. He indicated that additional submittals had been made in response to DEPREM comments and were awaiting consideration. There was also the issue as to the related special hearing request, which the Developer was requesting be resolved in its favor in order for the proposed development as filed to proceed. As to all other matters, it was his understanding that all agency comments had been addressed on the redlined Development Plan.

I then asked the particular agencies to state whether they had any outstanding issues. I have summarized their responses below:

Recreation and Parks: Bruce Gill appeared on behalf of the Department of Recreation and Parks and indicated that the project is subject to Local Open Space requirements. The local open space required for the 26 units is 26,000 square feet or 0.60 acre, more or less, with 16,900 square feet active and 9,100 square feet passive open space. Mr. Gill indicated the Developer requested a

Waiver of Local Open Space requirements, which was granted pursuant to a letter dated July 13, 2010 from the Department of Recreation and Parks. This letter was marked and accepted into evidence as Baltimore County Exhibit 1. As a result, a fee in lieu in the amount of \$100,140.95 is to be paid to Baltimore County prior to recordation of the record plat. With no other open issues, Mr. Gill's department recommended approval of the redlined Development Plan.

Planning Office: Jenifer Nugent appeared on behalf of the Office of Planning. Ms. Nugent submitted a revised comment for the Hearing Officer's Hearing dated September 17, 2010. In short, Ms. Nugent indicated the school impact analysis meets the provisions for adequate public facilities; the development proposal meets the Residential Performance Standards and the objectives for compatibility set forth in Section 32-4-402(d) of the B.C.C.; and the Office supports the requested Modification of Standards. In light of these findings, the Office of Planning recommended approval of the redlined Development Plan.

Development Plans Review (Public Works): Dennis Kennedy appeared on behalf of the Bureau of Development Plans Review. Mr. Kennedy confirmed that the Developer's redlined plan meets all of his department's requirements and comments, and indicated that his department recommended approval of the redlined Development Plan.

DEPRM: Jeff Livingston appeared on behalf of DEPRM. Mr. Livingston confirmed that there were no outstanding issues with regard to ground water management. He also indicated the Developer had made additional submittals with respect to storm water management and environmental impact review. These submittals were still being reviewed and under consideration at the time of the hearing. As a result, both the Developer and DEPRM requested that the record be left open so DEPRM could complete its review.

Office of Zoning Review: Bruno Rudaitis appeared on behalf of the Office of Zoning Review. Mr. Rudaitis indicated that his office had no outstanding issues with the plan, but did state that the proposed plan present a “density anomaly.” The accrual of density requested by the Developer could only be permitted by special hearing. Pending this request, his department recommended approval of the redlined Development Plan.

Land Acquisition: Brad Knatz appeared on behalf of the Bureau of Land Acquisition. Mr. Knatz indicated that there were no outstanding issues from his agency and recommended approval of the redlined Development Plan. Mr. Knatz made a general comment that the existing right-of-way and public roads should be clearly delineated on the plan.

The undersigned also inquired of the interested citizens in attendance and took testimony regarding their concerns. Tom Paglia testified and indicated he believes traffic will be an issue with the number of townhomes proposed for a relatively small area of land. Roger Haack also expressed concerns about increased traffic. He believes Kenwood Avenue serves as a main artery for a multitude of other existing neighborhoods and commercial areas and that the introduction of this project will exacerbate an already tenuous traffic situation. Jeffrey William also echoed the concerns of Mr. Paglia and Mr. Haack. David Ordanza testified as to concerns related to storm water management and how runoff could possibly impact existing adjacent homes. He also believes this development would result in the removal of trees and take away the buffer that now exists for nearby properties from the high school ball fields and activities at the school. He also believes that the introduction of townhomes in an area with existing single-family detached dwellings would bring down their home values.

In support of Development Plan approval, Mr. Woolman proffered Mr. Stine’s testimony and presentation of the redlined Development Plan. He introduced a copy of Mr. Stine’s resume,

which was marked and accepted into evidence as Developer's Exhibit 7, and offered Mr. Stine as an expert in land use and development, including site planning and layout, site grading, and construction detailing and landscape design, as well as interpretation of the Zoning Regulations. Mr. Woolman indicated that the property is irregularly shaped and contains approximately 5.1 acres, more or less, and is split zoned D.R.3.5 and D.R.5.5. The Plan calls for the development of the property for 26 single-family attached townhomes. As shown on the redlined Development Plan, the property has access from Kenwood Avenue via a narrow strip of land to the large portion of the property, in which a public road is proposed for the main entrance to the homes. This would lead to a T-shaped drive aisle. Straight ahead would be two clusters of townhome units with seven units in each cluster. On each side to the left and right would be a cluster of townhome units with six units in each cluster for a total of 26 units. Mr. Woolman submitted the Pattern Book that was marked and accepted into evidence as Developer's Exhibit 4, which also shows the layout of the proposed development, including the site design, architectural designs and floor plans of the proposed homes, site features and amenities, and landscape schemes and designs. The development proposal also features a storm water management facility and a forest buffer easement at the east end of the site, over 24,000 square feet of HOA open space at the southeast end of the property, and a forest conservation easement at the northwest side of the property.

In addition, Mr. Woolman submitted a Traffic Impact Analysis prepared by Lenhart Traffic Consulting, Inc., which was marked and accepted into evidence as Developer's Exhibit 5. This study responded to traffic concerns expressed by the State Highway Administration ("SHA") in their comments dated December 29, 2009. Typically, SHA does not require traffic studies for projects unless they generate 50 or more peak hour trips. Although the proposed development would consist of 26 townhome units and would generate only 18 morning peak hour trips and 20

evening peak hour trips, the Developer chose to obtain a more detailed study of the potential traffic impacts of the development. The report breaks down the existing site conditions, the projected annual growth in the area and background information related to this particular development, and the projected conditions with the proposed development, including trip generation and distribution, total traffic volumes, and projected level of service. The study concludes that the new site access to Kenwood Avenue (MD 588) will operate at a level of service “A,” which is well within the SHA guidelines that require a level of service of “D” or better. The study also concludes that the proposed development will satisfy overall SHA guidelines and will have a negligible effect on the road network. As to this proposed development, Mr. Woolman stated that, but for the pending consideration of the DEPRM submittals, there are no remaining unresolved issues and the redlined Development Plan meets and complies with all County and State development policies, guidelines and regulations.

As to the special hearing request, Mr. Woolman indicated that, as previously indicated by the comments from the Zoning Review Office, the proposed development presents a density anomaly. As depicted on the redlined Development Plan, most of the subject site is zoned D.R.5.5 (4.3 acres), which includes virtually all of the buildable area of the site. The remaining area consists of a narrow strip of land that provides in-fee access to the property from Kenwood Avenue in the form of a proposed public road. This small area (0.80 acre) is zoned D.R.3.5. As shown on the Site Data exhibit that was marked and accepted into evidence as Developer’s Exhibit 6, the D.R.3.5 zoned area would allow up to 2.8 units and the D.R.5.5 area would allow up to 23.6 units for a total of 26.4 units. The Developer has requested an accrual of density in order to utilize the full density from each zone for a total of 26 proposed townhome units. Mr. Woolman indicated that Section 500.7 of the B.C.Z.R. gives the undersigned broad authority and discretion

to interpret the Regulations and make an equitable determination that the zoning presents a “density anomaly,” and that the Developer should not be penalized by the manner in which the zone lines cross the property, nor should it be penalized for not putting homes where they would not fit, both practically and aesthetically. In short, the Developer should be able to benefit from the density available for the entire tract where all other aspects of the proposal meet County agency and development requirements.

During the period of time the record was left open in this matter, DEPRM considered the submittals made by the Developer as to the unresolved storm water management and environmental impact review issues. On January 5, 2001, the undersigned received an Inter-Office Correspondence of the same date from David Lykens, Development Coordination Manager with DEPRM, indicating that his agency had completed its review and could now recommend approval of the redlined Development Plan.

The Baltimore County Code clearly provides that the “Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations.” *See*, Section 32-4-229 of the B.C.C. After due consideration of the testimony and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from the various County agencies that the development plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the redlined Development Plan.

The Developer has also requested certain zoning relief. Zoning relief is typically sought to modify development and zoning regulations as well as uses. The special hearing, as previously indicated, is requested to approve the accrual of density on a tract split zoned D.R.3.5 and D.R.5.5 in order to permit the development of 26 townhomes, notwithstanding B.C.Z.R. Section

1B01.2.A.2 and the restrictions contained therein. I am persuaded to grant the requested special hearing relief in this instance. I agree with the Developer and the Zoning Review Office that the tract and this proposed development presents a “density anomaly,” and that the special hearing relief will enable the Developer to utilize the density that would otherwise be available, but for this anomaly. The Developer has attempted to allocate the improvements in the higher zoned areas of the property (the D.R.5.5 portion), which in my judgment is in keeping with the spirit and intent of the Regulations, while still permitting the Developer to benefit from the density available for the entire tract. Hence, I shall grant the special hearing.

Lastly, it should be noted that my decision with regard to the Petition for Special Hearing and the Hearing Officer’s Hearing considering the proposed redevelopment are treated differently for appeal purposes. The decisions as to the zoning Petitions are made by me sitting as Deputy Zoning Commissioner. An appeal from those decisions is a *de novo* appeal to the Board of Appeals of Baltimore County. The decision as to approval of the Development Plan is made by me sitting as Hearing Officer for Baltimore County. An appeal from that decision is on the record to the Board of Appeals pursuant to Section 32-4-281 of the B.C.C. Both appeals must be filed within 30 days from the date of this Order.

Pursuant to the advertisement, posting of the property, and public hearing held thereon, the requirements of which are contained in Article 32, Title 4, of the Baltimore County Code, the Craig S. Patrick Property Development Plan shall be approved consistent with the comments contained herein, and the special hearing relief shall be granted.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County, this 14th day of January, 2011, that the redlined Development Plan for the “5705 KENWOOD AVENUE PROPERTY” for the Developer, marked and accepted into

evidence as Developer's Exhibit 3, be and is hereby **APPROVED**; and

IT IS FURTHER ORDERED that the requested Modification of Standards as delineated by the Office of Planning in their comments dated September 17, 2010 be and are hereby **GRANTED**; and

IT IS FURTHER ORDERED by this Deputy Zoning Commissioner that the Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve the accrual of density on a tract split zoned D.R.3.5 and D.R.5.5 in order to permit the development of 26 townhomes, notwithstanding B.C.Z.R. Section 1B01.2.A.2 and the restrictions contained therein, be and is hereby **GRANTED**.

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

THB:pz