

IN RE: PLANNED UNIT DEVELOPMENT	*	BEFORE THE
(4118 Oak Road)		
13 th Election District	*	OFFICE OF
1 st Councilmanic District		
	*	ADMINISTRATIVE HEARINGS
(The Greens at English Consul)		
	*	FOR
Enterprise Housing Corporation, <i>Owner</i>		
Greens at English Consul Limited	*	BALTIMORE COUNTY
Partnership, <i>Developer</i>		
	*	CASE NO. 13-104

* * * * *

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 § 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 Colbert, Matz, Rosenfelt, Inc., for the proposed development of The Greens at English Consul (the "subject property"). The proposed development is more particularly described on the five (5) sheet redlined Plan submitted into evidence and marked as Developer's Exhibits 1A-1E.

The Baltimore County Council adopted Resolution 06-12 on March 5, 2012 stating that the proposed PUD site is eligible for County review in accordance with § 32-4-252 of the B.C.C. The County Council modified the density for this PUD by their resolution, permitting a total of 72 density units on the site. *See* Developer’s Exhibit 2A, p. 5.

The Developer proposes a four story, 90 residential unit senior housing facility on 4.52 +/- acres of land zoned DR 5.5 (4.50 +/- acres) and DR 16 (0.02 +/- acres). The site is located off of Oak Road across from the Baltimore Highlands Elementary School. Although the site is

mostly wooded, there is one existing single-family dwelling that will be razed. Improvements to the surrounding road and sidewalk networks are also proposed as part of this PUD.

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 November 28, 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 December 20, 2012.

Appearing at the public hearing on behalf of the Developer was Corey Powell, Stu Darley, Mickey A. Cornelius, P.E., PTOE, David Leary, Fernando Bonilla and Robert S. Rosenfelt, P.E., with Colbert, Matz, Rosenfelt, Inc., the engineering firm that prepared the Plan. Also in attendance was Ray Digiondomenico from the U.S. Department of HUD. Charles B. Marek, III, Esquire with Smith, Gildea & Schmidt, LLC appeared as counsel for the Developer.

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; Dennis Kennedy, Development Plans Review (DPR); and LaChelle Imwiko, Real Estate Compliance. Also appearing on behalf of the County were Jenifer Nugent, Department of Planning (DOP); David Lykens, 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 indicated that the redlined Development Plan (Exhibits 1A-1E) satisfied all Baltimore County rules and regulations, and their agencies recommended approval of the Plan.

Given that senior housing is proposed, the Local Open Space requirements are waived. *See* Baltimore County Exhibit 1.

DEVELOPER'S CASE

The first witness in Developer's case was Corey Powell, who is employed by the Developer, Enterprise Housing Corporation, and is the project manager for the Greens at English Consul Development. Mr. Powell indicated that Enterprise was founded in 1985, and has since that time completed many affordable housing projects in this region, including ten (10) in Baltimore County. Mr. Powell testified that Enterprise does not create "cookie cutter" communities, but rather designs each project to be unique and compatible with the existing neighborhood.

Mr. Powell explained that in this case the Developer proposes to construct 90 affordable senior housing units, which would provide independent living (no nursing or convalescent care is provided) to individuals 62 years and older. The project will incorporate several green aspects, including high efficiency HVAC systems, windows and appliances. Mr. Powell testified that the rents will range between \$370 to \$920 monthly, and that the Developer will invest \$9.2 million to construct the project. In terms of the "community benefit" to be provided by the PUD, Mr. Powell testified that the Developer would be providing funds to the local fire department for it to conduct certain training exercises, and that the construction of the project itself would be completed with high quality and attractive design elements that would also benefit the community at large. The Developer anticipates that the project will require 12 months for construction, and anticipates the project to be complete by March 2014.

The next (and final) witness in the Developer's case was Robert Rosenfelt, a licensed professional engineer, who was accepted as an expert witness. Mr. Rosenfelt explained briefly

his educational and professional background, and he indicated that he has been involved with at least 200 development projects in Baltimore County, including several senior housing PUD's.

Mr. Rosenfelt began his testimony by providing a brief overview of the site and the surrounding neighborhood, which he defined as that area bounded by I-295, I-895, Baltimore Avenue and West Patapsco Avenue, which was also the same delineation provided in the DOP's final report. Mr. Rosenfelt opined that the project was compatible with this neighborhood pursuant to B.C.C. § 32-4-402, and he discussed the various aspects and findings required under that ordinance. Thereafter, Mr. Rosenfelt reviewed the modifications of standards requested for the project, which are described in detail in a chart at page 19 of the Pattern Book. Developer's Exhibit 2A. Mr. Rosenfelt testified that each of the requested modifications are necessary to achieve the intent and purpose of the PUD regulations, which in this case he described as a flexible development process that will allow for multi-family, affordable senior housing, which could not be completed as designed using the existing zoning classification. Speaking globally, Mr. Rosenfelt emphasized that the modifications in this case were sought so that the Developer could construct the project fairly close to Oak Road, and provide the parking "nestled around" the building itself. The witness stated that this would provide a good visibility for the site, limit the impervious surface area required, and reduce the project's impact on environmentally sensitive areas, which as shown on the Plan are located at the rear (or western) portion of the site.

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 § 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 § 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 evidence which, when coupled with the findings in the DOP's final report (Baltimore County Exhibit 2) establishes each of these elements. The DOP indicated the PUD Development Plan was in conformance with the Master Plan and that it also satisfied the Baltimore County Zoning Regulations (B.C.Z.R.) § 260 performance standards and the compatibility requirements of the B.C.C. Baltimore County Exhibit 2. Mr. Powell testified that he was very familiar with the Developer's projects in the County (he indicated Enterprise has completed successfully ten [10] affordable housing projects in Baltimore 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. Rosenfelt 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. (including but not limited to B.C.C. § 32-4-245(c)(1)-

(5) and B.C.Z.R. The Developer also presented a letter from the President of the Greater Baltimore Highlands Community Association indicating that group “fully supports” the senior housing project. *See* Developer’s Exhibit 2A, p. 36. 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 27th day of December, 2012, that the Development Plan identified herein as **THE GREENS AT ENGLISH CONSUL** (Developer’s Exhibits 1A-1E), be and is hereby APPROVED.

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

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

JEB/dlw