

<b>IN RE: DEVELOPMENT PLAN HEARING</b>	*	BEFORE THE OFFICE OF
305 York Rd. at Towson town Blvd.		
9 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
5 <sup>th</sup> Council District		
<b>(Towson Row)</b>	*	FOR
Towson Row Statutory Trust, <i>Owner</i>	*	BALTIMORE COUNTY
Towson Row, LLC <i>Developer</i>	*	<b>HOH Case No. 09-0851</b>

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**ADMINISTRATIVE LAW JUDGE’S  
DEVELOPMENT PLAN OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for a public hearing on a development proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). Towson Row Statutory Trust, the owner of the subject property, and Towson Row, LLC, the developer of the subject property (hereinafter “the Developer”), submitted for approval an eight-sheet redlined Development Plan (“Plan”) prepared by Matis Warfield, Inc., known as “Towson Row.”

The Developer proposes a mixed-use development project to include 220,500 sq. ft. of office space on the top seven floors of a proposed 17-story building, a 55,000 sq. ft. grocery at the ground level of the 17-story office building, 31,375 sq. ft. of general retail proposed throughout the site at the street level, 31,375 sq. ft. of restaurant space throughout the site at the street level, a 170-room hotel proposed within an 11-story building, 374 rental apartment units within a 24-story building and 900 beds of student housing in a second 24-story building. Parking is proposed for the entire site at 1,435 total parking spaces with 360 spaces located subsurface and the remaining spaces located above ground on seven levels of structured parking within the proposed 17-story office building. Parallel parking spaces will also be provided throughout the site. A central plaza/drop off area and additional streetscape amenities are

proposed throughout the site. Ingress and egress is proposed along Towsontown Boulevard with removal of the existing median to allow for turning movements into and out of the site. A traffic signal is planned for the main entry point off of Towsontown Boulevard. Other vehicular access points are located along Chesapeake and Washington Avenues. Pedestrian access is proposed near the corner of York Road and Towsontown Boulevard as well as the entry points located along Towsontown Boulevard and Chesapeake Avenue. Loading and service areas are proposed along designated points interior to the development site.

The property is within the commercial Towson Design Review Panel (DRP) review area. The DRP reviewed both the Design Guidelines (Developer's Exhibit 10) and the Development Plan (Developer's Exhibit 1A-1H) and conditional approval was granted by the DRP on June 10, 2015. Developer's Exhibit 12. In addition, the proposed development "involves" a structure on the Final Landmarks List: the M & P Railroad Bridge Abutments No. 305 (MHIP No. BA-1542). The Landmarks Preservation Commission (LPC) granted a Certificate of Appropriateness at their meeting on February 12, 2015. Developer's Exhibit 15. This will allow the Developer to remove the "non-historic" side wall attached to the Bridge Abutment, which is a protected structure. The proposed development was introduced on June 4, 2015 to the Planning Board, which voted on June 18, 2015 to approve the Towson Row development plan as presented and recommended by the LPC. Developer's Exhibit 16.

Details of the proposed development are more fully depicted on the redlined eight-sheet Development Plan that was marked and accepted into evidence as Developer's Exhibit 1A - H. The property was posted with the Notice of Hearing Officer's Hearing on July 8, 2015 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing. The undersigned conducted the hearing on August 6, 2015, at 10:00

AM, Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland.

In attendance at the Hearing Officer's Hearing (HOH) in support of the Plan on behalf of the Developer and property owner were Arthur Adler, Brandon Freel, Matt D'Amico, Brian Reetz, Ken Schmid, Mark Keeley, Linda LoCascio, and Stephen A. Warfield, P.E., with Matis Warfield, Inc., the consulting firm that prepared the site plan. Christopher Mudd, Esq. and Robert A. Hoffman, Esq., both with Venable, LLP, represented the Developer. Several citizens from the area also attended the hearing and their names are reflected on the sign-in sheets. Joshua Glikin, Esq. appeared and represented himself and the West Towson Neighborhood Association, Inc.

Numerous representatives of the various Baltimore County agencies who reviewed the Plan also attended the hearing, including the following individuals from the Department of Permits and Development Management: Darryl Putty, Project Manager, Dennis A. Kennedy and Jean M. Tansey (Development Plans Review [DPR]), LaChelle Imwiko, Real Estate Compliance, and Aaron Tsui (Office of Zoning Review). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (DEPS), and Jenifer Nugent from the Department of Planning (DOP).

These County agencies 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. 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. This "ongoing process," of which the HOH "is just the first

step,” was described by the court in Monkton Preserv. Ass’n. v. Gaylord Brooks, 107 Md. App. 573, 584-85 (1996).

Pursuant to §§ 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. All County agency representatives (with one exception noted below) indicated the Plan addressed any comments submitted by their agency, and they each recommended approval of the Plan. Ms. Nugent presented a school analysis (Baltimore County Exhibit 2) indicating that the area schools are not overcrowded using state guidelines. Ms. Tansey, the County’s landscape architect, indicated that Developer was granted a waiver of the Local Open Space regulations, pursuant to correspondence dated June 4, 2015. Baltimore County Exhibit 1. In lieu of providing the open space required by the Regulations (i.e., 599,000 sq. ft., per Developer’s Exhibit 1F), Developer will make a payment in the amount of \$55,000. At the hearing, Ms. Tansey noted she had not yet completed her review of the schematic landscape plan for the project. Developer’s Exhibit 8. Ms. Tansey subsequently notified the OAH on August 28, 2015 that the schematic landscape plan had been approved by her office.

In the “formal” portion of the case, the Developer presented two witnesses. First was Stephen A. Warfield, P.E., a professional engineer accepted as an expert. Mr. Warfield explained in detail the development proposal, and reviewed each sheet of the Development Plan. Mr. Warfield opined the Developer satisfied all Baltimore County rules and regulations.

Ken Schmid, a traffic engineer who was accepted as an expert, was the next witness in the case. Mr. Schmid explained that Baltimore County requested a traffic impact study be prepared for the project. The witness presented the study (Developer’s Exhibit 18) and described his findings at each of the “key intersections” within the study area. Mr. Schmid opined that all

intersections (with the exception of Bosley Avenue and Towsontown Boulevard, which operates at an “E” level of service during the P.M. peak time period) would function at acceptable levels of service. In addition, Mr. Schmid explained that the Developer will provide new traffic signals at the intersection of Washington Avenue and Towsontown Boulevard and proposed Towson Row and Towsontown Boulevard, which he explained will greatly improve the ingress/egress from the site.

### LEGAL ISSUES

During the course of the hearing, several legal issues were identified by the community, and legal memoranda were submitted on certain of these points. The first such issue, which Mr. Glikin explained was of primary concern to the community, related to the waiver of the local open space requirements, as set forth in Baltimore County Exhibit 1. Counsel questioned Ms. Tansey about Resolution 63-00, which was cited by Baltimore County in granting the waiver request. Ms. Tansey acknowledged that the undersigned rendered an opinion in the 101 York dormitory PUD project (PAI Case No. 09-0843) that Resolution 63-00 was no longer valid. Even so, Ms. Tansey explained that the 101 York PUD case was appealed to the County Board of Appeals (apparently an opinion has not yet been issued in the case), and thus she believed it was still an open issue.

Mr. Mudd explained that in the 101 York case the Greater Towson Council of Community Associations (GTCCA) filed an “interlocutory” appeal -- prior to the conclusion of the development case -- of the local open space waiver. As such, according to Mr. Mudd, the issue is not properly before the Administrative Law Judge (ALJ).

In these circumstances, I believe the Developer has the better of the argument. Both state and county law provide that the board of appeals shall hear appeals concerning the grant or

denial of (among other things) “executive, administrative and adjudicatory orders.” Baltimore County Charter § 602(d); Maryland Code, Local Government Article, § 10-305. In a long line of cases, the courts have considered these provisions and held that if the grant of an approval or exemption by the government constitutes an “operative event” it is then incumbent upon a challenger to note an appeal within the 30-day period provided by County law. *See, e.g., Beth Tfiloh v. Glyndon Comm. Ass’n*, 152 Md. App. 97, 110 (2003). As noted earlier, the GTCCA filed such an appeal in the 101 York PUD case within the 30-day timeframe, but failed to do so in the present case. As such, I believe that the OAH is without “jurisdiction” to consider the issue of whether or not the local open space waiver was properly granted.

Counsel for Developer also noted B.C.C. § 32-6-110 provides “the fees that are paid by an applicant under this title are not appealable.” While this provision – – which has not been addressed in any prior development plan hearings – – would appear to mean that the issue is also not a proper one for the board of appeals, I will leave for another day whether there is a direct conflict between this provision and Charter § 602. *See, Hope v. Balto. Co.*, 44 Md. App. 481 (1980). It may well be, as Mr. Glikin asserts in his post-hearing brief, that B.C.C. § 32-6-110 is intended to apply only to the fee schedule approved by the County Administrative Officer and County Council. For present purposes it suffices to say that the local open space issue is not properly considered within a development plan hearing.

The community also disputes that the development is exempt from the County’s growth management legislation, which provides for a moratorium on development in certain instances if public facilities (i.e., roads, sewers, or water supply) are inadequate to serve the proposed project. B.C.Z.R. § 4A02.1. *et. seq.* Under those regulations, a project within a town center (the Towson Row site is zoned BM-CT per Developer’s Exhibit 1A, note 5) “for which an official

detailed plan was approved by the Planning Board” prior to 1979, is not subject to the mapping standards and growth management regulations pertaining to water supply, sewerage and/or transportation. B.C.Z.R. § 4A02.4.E.1.e. In this regard, the “Towson Plan” qualifies as an “official detailed plan” and was approved by the Planning Board on April 17, 1975. As such, this project qualifies for an exemption from the growth management legislation for transportation.

The community spends a great deal of time in its brief arguing about whether or not the project should be included within the traffic shed surrounding the “F” rated intersection at York Road and Burke Avenue. That determination is made by the County Council, not the ALJ. And the County Council did not include the subject property within the traffic shed for York Road and Burke Avenue on either the 2014 or 2015 “Basic Services Map Transportation Zones.” The County Code or B.C.Z.R. do not provide the ALJ with authority to gainsay these legislative determinations.

In addition, whether or not a property is included within a traffic shed is – – for purposes of this case – – beside the point. The law (B.C.Z.R. § 4A02.4.E.1.e) itself provides the exemption for properties within a town center for which a detailed plan was approved prior to 1979. There is no material dispute on these issues and the Developer is entitled to the exemption. The community notes (brief, p. 14) that many things have changed in Towson since the 1975 plan was approved by the Planning Board. That is no doubt the case, but what has not changed is the law providing an exemption in these circumstances, and if a change is to be made in this respect it must be done by the County Council, not the ALJ. For what it is worth, the Towson Community Plan (approved in 1992) which is incorporated into Master Plan 2020 provides that “the exemption from Basic Services legislation in Towson for transportation should

remain in place.” Id. at 58.

During the preliminary portion of the hearing, Aaron Tsui of the Zoning Review Office noted that the Developer applied for and was granted an exemption under B.C.Z.R. § 235B.7. A newspaper announcement in the Jeffersonian and four (4) signs posted at the site provided notice the Developer was seeking such an exemption, in accordance with B.C.Z.R. §235B.7.C.2.b. Under that regulation, projects within the CT District of Towson which are located within a particular boundary (and this project is so located) are entitled to an exemption from certain setback and height limitations. Specifically, the regulation provides in pertinent part as follows:

If the Director of the Department of Permits, Approvals and Inspections (PAI) finds that a proposed development meets the requirements of § A, the Director shall exempt the proposed development from any required front, side or rear yard setback, or any setback from the centerline of any street, or any building height limitation.

By its use of the word “shall,” the County must grant such an exemption if the project is located within the boundaries described in section A of the regulation. Mr. Mudd contends that, like the open space waiver issue, the granting of this exemption was an “operative event” which provided the community with a 30-day period in which to file an appeal with the board of appeals. In fact, the regulation expressly provides the decision “may be appealed [to the board of appeals] under Section 32-3-401 of the County Code.” Id. Such an appeal was not filed, and thus the OAH does not have authority to consider this issue. In accordance with the exemption letter contained on the plan (Dev. Ex. 1G), the setback and height limitations otherwise applicable in the BM zone would not be applicable in the present case.

The community also contends that an insufficient number of parking spaces are proposed, given that the 900 beds envisioned for the 24-story building do not qualify as student housing or a dormitory. The Developer has filed a motion to strike with respect to this and several other of

the issues raised in the community's brief, and I agree that the scope of that paper exceeds what was agreed upon at the conclusion of the hearing. Even so, in the interest of completeness and to facilitate appellate review, I will address the point.

The term "dormitory" is not defined in the B.C.Z.R and the definition provided in Webster's -- cited by the community -- does not preclude an "off-campus" residence hall from qualifying as a "dormitory." In the circumstances of this case, since the Developer availed itself of the reduced parking requirements for dormitories, a note should be added to the Development Plan (as was done in the 101 York PUD case) restricting residency in this building to undergraduate or graduate students of post-secondary educational institutions. A condition to that effect will be included in the Order below.

The final issue concerns Mr. Schmid's recommendation to restripe Chesapeake Avenue, and to eliminate parking on the south side of the street between York Road and proposed Towson Row. *See* Dev. Ex. 18, p. 24. Mr. Schmid opined this would improve traffic along Chesapeake Ave. and facilitate more efficient right-turn movements onto York Road. While these appear to be worthwhile improvements, Michael Ertel, President of the GTCCA, raised questions about the MTA bus stop along this portion of Chesapeake, and the valet parking operation for Seven West restaurant.

Since Baltimore County cannot control or dictate the location of MTA bus stops, I am confident that issue will be resolved in an appropriate manner that does not disrupt or interfere with transit service for the area. The valet parking for Seven West however does seem like an issue that needs to be addressed. Mr. Ertel noted the restaurant relies upon valet parking in the afternoon and evening for lunch and dinner service. Assuming the improvements suggested by Mr. Schmid come to fruition, Seven West must be permitted to continue offering valet parking

for its customers. The nature of valet parking is such that cars do not remain parked for any length of time, and thus I do not believe that allowing the practice to continue will have an adverse impact upon traffic along Chesapeake Avenue.

The Baltimore County Code provides that the “Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations.” B.C.C. § 32-4-229. 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 Plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the Development Plan.

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 “Towson Row” Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 31st day of August, 2015, that the “**TOWSON ROW**” redlined Development Plan, marked and accepted into evidence as Developer’s Exhibit 1A–1H, be and is hereby **APPROVED**, subject to the condition noted below.

1. Within 15 days of the date hereof Developer shall submit an amended version of Exhibit 1A (sheet 1 of the Development Plan) which adds a Note 29 as follows:

“Occupancy in the 900-bed student housing building shall be restricted to undergraduate and graduate students attending post-secondary institutions of higher education.”

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