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| IN RE: <b>PLANNED UNIT DEVELOPMENT</b>                               | * | BEFORE THE              |
| (1 <sup>st</sup> Amendment to the 2 <sup>nd</sup> Refined Dev. Plan) |   |                         |
| 15 <sup>th</sup> Election District                                   | * | OFFICE OF               |
| 6 <sup>th</sup> Councilmanic District                                |   |                         |
|  | * | ADMINISTRATIVE HEARINGS |
| <b>(The Preserve at Windlass Run)</b>                                |   |                         |
|  | * | FOR                     |
| FRP Bird River, LLC, <i>Owner</i>                                    |   |                         |
| Windlass Run, LLC,   | * | BALTIMORE COUNTY        |
| <i>Applicant/Developer</i>   |   |                         |
|  | * | <b>CASE NO. 15-0948</b> |

\* \* \* \* \*

**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 § 32-4-245(e) of the Baltimore County Code (B.C.C.), which governs amendments to previously approved PUD plans. 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 Morris & Ritchie Associates, Inc., for the 1<sup>st</sup> Amendment to the 2<sup>nd</sup> Refined development plan of The Preserve at Windlass Run (the "subject property"). The proposed development is more particularly described on the seven (7) sheet redlined Plan submitted into evidence and marked as Developer's Exhibit 4.

The Baltimore County Council adopted Resolution 73-08 on September 15, 2008 stating that the proposed PUD site is eligible for County review in accordance with § 32-4-242 of the B.C.C. By Order dated June 25, 2009, former Zoning Commissioner Wiseman approved the initial PUD Plan for the project. The current request seeks approval to change certain townhomes shown on the plan from rear to front load garages, decrease certain setbacks and modify the open space areas. The overall density of the project will not change. The County deemed the requested changes to be “material” (Developer’s Exhibits 2 and 3); as such, the Developer was required to

seek approval following a public hearing.

A 2<sup>nd</sup> 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 May 13, 2015. 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 on June 5, 2015.

The property was posted with the Notice of Hearing on May 7, 2015 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing. Appearing at the public hearing on behalf of the Developer was Tim Hartman of Beazer Homes, and Matthew Bishop, with Morris & Ritchie Associates Inc., the engineering firm that prepared the Plan. Also in attendance was Linda Felts and Richard Pitz. Jennifer R. Busse, Esquire with Whiteford, Taylor & Preston, LLP 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): Jerry S. Chen, Project Manager; Dennis A. Kennedy, Development Plans Review (DPR); Jun R. Fernando, Office of Zoning Review, and Brad Knatz, Real Estate Compliance. Also appearing on behalf of the County were Jenifer Nugent, Department of Planning (DOP); and Jeff Livingston, Department of Environmental Protection and Sustainability (DEPS). All Baltimore County representatives indicated that the redlined Development Plan (Exhibit 4) satisfied all Baltimore County rules and regulations, and their agencies recommended approval of the Plan.

## **DEVELOPER’S CASE**

The first witness in Developer’s case was Tim Hartman, Director of Construction with Beazer Homes, which purchased this property in 2014. Mr. Hartman provided a brief overview of the project, and explained that the amendments proposed in this case will allow the Developer to offer to the community a larger variety of homes (both townhomes and single family dwellings) with different configurations, garage locations, etc.

Matthew Bishop, a licensed landscape architect accepted as an expert, was the next witness in the Developer’s case. Mr. Bishop testified that the Developer was seeking to modify certain development standards for the project, and he explained each of the proposed changes which were shown in a chart and highlighted in green on the Plan. Mr. Bishop testified that in his opinion the changes were relatively minor, and that it would not result in an increase in density or a different “feel” to the community. Mr. Bishop opined that the Plan satisfies all requirements set forth in the Baltimore County Zoning Regulations (B.C.Z.R.) and B.C.C., and is also in conformance with the Master Plan and area plans, a finding also made by the Department of Planning. Mr. Bishop also noted that by changing many of the townhouse units to front garage orientation, the Developer was going to be removing certain alleys from the Plan which would reduce substantially the amount of impervious surface shown on the Plan when compared to the original Plan which featured more rear loading garages.

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 of agency witnesses, establishes each of these elements. The DOP indicated in its final report dated May 13, 2015 the PUD Development Plan was in conformance with the Master Plan, and satisfied the B.C.Z.R. § 260 residential performance standards, B.C.Z.R. § 430, and the compatibility requirements of the B.C.C. Mr. Bishop testified that he was familiar with the Developer's projects in the County and noted that this project was well underway, 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. Bishop 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. In light of this testimony,

and the positive recommendation of all County reviewing agencies, the PUD Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Hearing Officer/Administrative Law Judge this 9<sup>th</sup> day of **June, 2015**, that the seven (7) sheet redlined Development Plan identified herein as 1<sup>st</sup> Amendment to the 2<sup>nd</sup> Refined Development Plan known as “**THE PRESERVE AT WINDLASS RUN**” (Developer’s Exhibit 4), be and is hereby **APPROVED**.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw