

IN RE: <b>DEVELOPMENT PLAN HEARING</b>	*	BEFORE THE OFFICE
<b>(1505 Sulphur Spring Road)</b>		
13 <sup>th</sup> Election District	*	OF ADMINISTRATIVE HEARINGS
1 <sup>st</sup> Councilmanic District		
	*	FOR
<b>(ARBUTUS STATION)</b>		
	*	BALTIMORE COUNTY
Whalen Properties Ltd. Partnership		
<i>Developer/Applicant</i>	*	HOH Case No. 13-0225
* * * * *		

**ADMINISTRATIVE LAW JUDGE’S  
DEVELOPMENT PLAN OPINION AND 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 the development review and approval process contained in Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). Whalen Properties Ltd. Partnership, the developer/applicant (hereinafter “the Developer”), submitted for approval a three-sheet redlined Development Plan (“Plan”) prepared by Gower Thompson, Inc., known as “Arbutus Station.”

The Developer proposes to construct on the 2.48 acre site (zoned BL) a two-story 20,000 sq. ft. office building with first floor retail and a 7,000 sq. ft. free standing restaurant. The Plan contains a note (#23, Exhibit 4B) indicating the project may be developed in two phases with the two-story office building being built in the first phase. The site is currently improved with a one-story building that was used for an auto repair service business. That business is no longer in operation, and the Developer plans to raze the existing structure.

Details of the proposed development are more fully depicted on the redlined three-sheet Development Plan that was marked and accepted into evidence as Developer’s Exhibit 4A-4C. The property was posted with the Notice of Hearing Officer’s Hearing on February 12, 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 a hearing on March 12, 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 was Stephen W. Whalen, Jr., Thomas Whalen, Mark Fleschner, Kathleen Fleschner, Wes Guckert, and Fred Thompson with Gower Thompson, Inc., the engineering firm that prepared the Plan. G. Scott Barhight, Esquire with Whiteford, Taylor & Preston, LLLP, appeared as counsel for the Developer. Several citizens from the area also attended the hearing and their names are reflected on the sign-in sheets.

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, Approvals and Inspections (PAI): Darryl D. Putty and Jerry Chen (Division of Development Processing); Dennis Kennedy, Development Plans Review [DPR], Brad Knatz, Real Estate Compliance, and Leonard Wasilewski from the 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 and Joe Wiley, Department of Planning (DOP).

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 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.

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.

With one exception, County agency representatives indicated the Plan addressed all comments submitted at the Development Plan Conference (DPC) by their agency, and they each recommended approval of the Plan. Mr. Kennedy indicated that a schematic landscape plan had not yet been approved by the County's landscape architect, and the record in this case was left open to allow for this submittal. On March 19, 2015, Jean Tansey, a registered landscape architect, forwarded to this Office an approved schematic landscape plan for the project. Though this plan was not entered as an exhibit, I will include with the case file a copy of the plan (on which is noted Ms. Tansey's approval) and transmittal memo.

Three witnesses testified in the "formal" portion of the case. First was Mark Fleschner, Vice President of Construction for Whalen Properties. Mr. Fleschner described in general terms the nature of the project by reference to a rendered development plan (Exhibit 1) which depicted the proposed improvements at the site.

Wes Guckert, a transportation planner accepted as an expert, was the next witness in Developer's case. Mr. Guckert explained that even though the project does not adjoin or directly access the state road network, the State Highway Administration (SHA) requested Developer to perform a traffic study. He testified his firm prepared such a study, which demonstrated the project will not cause congestion in or overburden the existing roadway network. The witness advised the property is not located within a service area identified by Baltimore County as a deficient traffic shed, and he testified that the signalized intersections near the project function at an "A" level-of-service, and will continue to do so after the project is completed.

The final witness was Fred Thompson, a licensed professional engineer accepted as an expert. Mr. Thompson, who has over 40 years of professional experience, testified he has been involved with this project for several years, assisting the Developer since the beginning of the planning process. The witness testified a concept plan stormwater management plan has been approved by DEPS and that agency also granted Developer (in 2013) a variance to impact a small forest buffer area that was generated by the intermittent surface water flow of the existing storm- water drainage system. (*See* note 21, Exhibit 4B). Mr. Thompson opined Developer satisfied all County rules and regulations concerning development approvals.

At the conclusion of Developer’s case, four members of the community (Ed Audy, Terry Nolan, Deborah SeBour and Carol Mox) offered testimony and comments in support of the project.

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. Based on 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.

FOREST CONSERVATION  
SPECIAL VARIANCE

Mr. Thompson testified that the construction for the project would necessitate the removal of five (5) specimen trees at the site. The trees in question are shown on the site constraints plan (Exhibit 4A), which also contains a chart identified as “specimen tree data”. Mr. Thompson explained that DEPS granted conditionally in 2013 a forest conservation variance allowing Developer to remove the five trees. Exhibit 4B, note 22.

Under the B.C.C., the decision of the Director of DEPS granting the “special variance” is forwarded as a “recommendation” to the Administrative Law Judge (ALJ), who may grant or deny the request. B.C.C. § 33-6-116. In this case, the Director’s decision dated September 27, 2013 permitted the removal of the five specimen trees, and that approval was conditioned upon Developer “purchasing 1.2 acres of reforestation credit at an EPS approved retention bank.” Exhibit 4B, note 24. Based upon Mr. Thompson’s testimony and the recommendation of the Director of DEPS, the special variance request will be granted. I find that granting the request “will not alter the essential character of the neighborhood,” or “adversely affect water quality,” and is consistent with the spirit and intent of the forest conservation title of the County Code. B.C.C. § 33-6-116(d) and (e).

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 24<sup>th</sup> day of **March, 2015**, that the “**ARBUTUS STATION**” redlined Development Plan, marked and accepted into evidence as Developer’s Exhibit 4A-4C, be and is hereby **APPROVED**, subject to the conditions noted below.

IT IS FURTHER ORDERED by this Administrative Law Judge/Hearing Officer that the special variance request pursuant to B.C.C. § 33-6-116, permitting removal of five specimen trees at the site, be and is hereby GRANTED, upon condition that Developer purchase 1.2 acres of reforestation credit at an EPS-approved retention bank.

1. Developer must prior to issuance of permits for the construction of the proposed restaurant submit for approval by DOP elevation drawings of the proposed structure(s).

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