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| **IN RE: DEVELOPMENT PLAN HEARING & PETITION FOR VARIANCE** | * | BEFORE THE OFFICE OF |
| (10037, 10039, 10101 & 10105 Harford Road) | * | ADMINISTRATIVE HEARINGS |
| 11th Election District | * | FOR |
| 5th Council District | | |
| **(THE TOWNES AT GUNPOWDER FALLS)** | * | BALTIMORE COUNTY |
| Bateman & Loundas LLC, *Owner* | * | |
| TAGF, LLC, *Applicant* | | **HOH Case No. 11-1033 &** |
| Developer | * | **Zoning Case No. 2015-0291-A** |

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**ADMINISTRATIVE LAW JUDGE'S COMBINED**
**DEVELOPMENT PLAN AND ZONING 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."). Emerson L. Dorsey, Esquire, with Tydings & Rosenberg, on behalf of Bateman & Loundas, LLC, *Owner* of the subject property, and TAGF, LLC, *Applicant,* (hereinafter "the Developer"), submitted for approval a two-sheet redlined Development Plan ("Plan") prepared by DS Thaler & Associates, Inc., known as "The Townes At Gunpowder Falls."

The Developer proposes 28 garage townhouses on 5.5 acres of land zoned BL-AS (1.76 acres), BL (1.07 acres), DR 5.5 (2.5 acres), DR 16 (0.01 acres), DR 2 (0.01 acres) and RC 7 (0.03 acres). The site is currently developed with a paved parking lot in the commercially-zoned portion of the property (site of the former Bill Bateman's Restaurant) with wooded areas to east and north portions of the property.

The Developer also has filed a Petition for Variance pursuant to the Baltimore County Zoning Regulations (B.C.Z.R) seeking:

A. From § 1B01.2.C.1.C of the B.C.Z.R. and the Comprehensive Manual of Development Policies (C.M.D.P.), for future Lots 5,6,22 and 23 to permit a minimum side building face to side building face setback of 20 feet in lieu of 25 feet,

B. From § 1B01.2.C.1.C of the B.C.Z.R. and the C.M.D.P., for future Lot 28 to permit a minimum side building face to the tract boundary line of 17 feet in lieu of 30 feet,

C. From § 301.1.A of the B.C.Z.R., for future Lots 1 through and including 28, to permit rear yard setback for potential decks to be 18 feet in lieu of the required 22.5 feet,

Details of the proposed development are more fully depicted on the redlined two-sheet Development Plan that was marked and accepted into evidence as Developer's Exhibit 1A & 1B. The property was posted on August 6, 2015 with the Notice of Hearing Officer's Hearing and Zoning Notice, in compliance with the regulations. The undersigned conducted the hearing on September 3, 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 was David Thaler, Stacey McArthur and Brian Childress, with DS Thaler & Associates, Inc., the consulting firm that prepared the site plan. Emerson L. Dorsey, Esquire, appeared and represented the Developer.

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 Putty, Project Manager, Dennis A. Kennedy and Jean M. Tansey (Development Plans Review [DPR]), and Jason Seidelman (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).

Ruth Baisden, President of the Greater Parkville Community Council (GPCC) attended the hearing and opposed certain aspects of the project. In addition, Glen Gischel, President of North

Winds Home Owners Association (HOA), represented by Jack Sturgill, Esquire, attended to express concerns about the project. These issues will be discussed below.

Under the County Code, I am required first to identify any unresolved comments or issues as of the date of the hearing. At the hearing, each of the Baltimore County agency representatives identified above indicated that the redlined Development 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) demonstrating that none of the area schools are over capacity. In addition, she noted the DOP approved a pattern book for the project (Baltimore County Exhibit 3) and concurred with the compatibility report submitted by Developer (Baltimore County Exhibit 4). Ms. Tansey noted that a schematic landscape plan was approved on September 1, 2015, and she also stated Developer was granted a waiver of Local Open Space (LOS) requirements upon a payment of $106,120 (fee-in-lieu), as detailed on Baltimore County Exhibit 1. Ms. Baisden objected to the waiver, and that issue will be discussed in greater detail below.

The Developer presented one witness in its development and zoning cases, Brian Childress, P.E. Mr. Childress, who was accepted as an expert, explained in detail the project and made reference to an aerial photo of the vicinity (Developer's Exhibit 2) and a rendered site plan (Developer's Exhibit 3). Mr. Childress explained the property is comprised of five parcels totaling approximately 5 ½ acres. Developer proposes 28 garage townhouses as shown on the plan. Mr. Childress also described the efforts undertaken by Developer to preserve existing green space and provide a buffer for the townhouse community to the east. Mr. Childress opined Developer satisfied all Baltimore County rules and regulations.

With respect to the zoning case, Mr. Childress opined the property was unique due to its irregular shape and the presence of enhanced environmental features (such as two stormwater management devices on a relatively small site). He testified Developer would experience a practical

difficulty if the regulations were strictly interpreted, since it would be unable to construct the community as planned. I believe variance relief can be granted without a detrimental impact upon the health, safety and welfare of the community. The Petitioner has satisfied the requirements for variance relief set forth in Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008), and the petition will be granted.

Mr. Gischel testified that his community has both old and young residents, and that noise from the proposed construction was an important issue. He requested that construction not begin before 8:00 a.m. Baltimore County has a domestic noise ordinance, but not any noise regulations governing commercial or construction activity. The State of Maryland may, but my understanding is that the enforcement of those rules has been lax or nonexistent. In any event, the restriction proposed by Mr. Gischel seems reasonable, and a condition to that effect will be included in the Order below.

Mr. Gischel also indicated his community would prefer to not have a sidewalk (as shown on the plan) along Harford Road adjacent to the open space parcel owned by North Winds. The DOP in its Concept Plan comments dated January 13, 2015 requested Developer to include the sidewalk pursuant to the County's "Complete Streets" Policy. As such, I will defer to the DOP's expertise, and will not gainsay this recommendation.

Ms. Baisden objected primarily to the waiver of LOS, and noted that this area of the County is deficient in open space and recreational amenities. While that may be the case, I do not believe that the ALJ is authorized to consider the propriety of a LOS waiver or the adequacy of the fee-in-lieu. This issue arose recently in the 101 York dormitory PUD project (PAI Case No. 09-0843). In that case, the Greater Towson Council of Community Associations (GTCCA) filed with the Board of Appeals an "interlocutory" appeal -- prior to the conclusion of the development case -- of the local open space waiver.

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). The LOS waiver in this case was granted on July 2, 2015, and no appeal was filed with respect to that issue. As such, I believe the OAH is without "jurisdiction" to consider the issue of whether or not the local open space waiver was properly granted.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 15th day of September, 2015, that the **"THE TOWNES AT GUNPOWDER FALLS"** redlined Development Plan, marked and accepted into evidence as Developer's Exhibit 1A & 1B, be and is hereby **APPROVED.**

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (B.C.Z.R), as follows:

A. From § 1B01.2.C.1.c of the B.C.Z.R., for future Lots 5, 6, 22 and 23 to permit a minimum side building face to side building face setback of 20 feet in lieu of 25 feet,

B. From § 1B01.2.C.1.c of the B.C.Z.R. and the C.M.D.P., for future Lot 28 to permit a minimum side building face to the tract boundary line of 17 feet in lieu of 30 feet,

C. From § 301.1.A of the B.C.Z.R., for future Lots 1 through and including 28, to permit a minimum rear yard setback of 18 feet for potential decks in lieu of the required 22.5 feet, subject to the drainage and utility easement for Lots 16, 17 and 22,

be and is hereby **GRANTED**.

The relief granted herein shall be expressly subject to the following condition:

1. There shall be no construction activity of any kind prior to 8:00 a.m. at the subject property.

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/sln