

IN RE: DEVELOPMENT PLAN HEARING & PETITION FOR VARIANCE	*	BEFORE THE OFFICE OF
(7726 Johnnycake Road)	*	ADMINISTRATIVE HEARINGS
1 st Election District	*	FOR
1 st Council District	*	
(PATAPSCO GLEN)	*	BALTIMORE COUNTY
Security Boulevard Ventures, II, LLC,	*	
<i>Owner</i>		HOH Case No. 01-0584 &
U.S. Home Corporation,	*	Zoning Case No. 2016-0109-A
<i>Developer</i>		

* * * * *

**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.”). Patricia A. Malone, Esquire and Adam M. Rosenblatt, Esquire, with Venable, LLP, on behalf of Security Boulevard Ventures, II, LLC, *Owner*, and U.S. Home Corporation, *Developer* of the subject property, (hereinafter “the Developer”), submitted for approval a redlined Development Plan (“Plan”) prepared by Colbert, Matz & Rosenfelt, Inc., known as “Patapsco Glen.”

The Developer is proposing 376 single-family attached dwellings on a total of 58.6 acres, more or less, of which 54.9 acres is zoned D.R. 10.5 (density residential, 10.5) the balance being BM-IM (Business Major with an Industrial Major District Overlay) with associated parking and road network.

The Developer also has filed a Petition for Variance pursuant to § 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R) to approve the following:

1. From B.C.Z.R. § 1B01.2.C.1.c to permit front building face to property line setbacks ranging from 4 ft. to 20 ft. in lieu of the required 25 ft.,

2. From B.C.Z.R. § 1B01.2.C.1.c to permit rear building face to property line setbacks ranging from 17 ft. to 27 ft. in lieu of the required 30 ft.,
3. From B.C.Z.R. § 1B01.2.C.1.c pursuant to § 504.2 of the B.C.Z.R. and the Comprehensive Manual of Development Policies CMDP, Division II, Section A: Residential Standards, Table VII, to permit side building face to side building face setbacks of 20 ft. in lieu of the required 25 ft.,
4. From § 504.2 and CMDP, Division 2, Section A, Residential Standards, to permit 7 and 8 townhouse units in a group in lieu of the maximum permitted 6 townhouse units in a group,
5. To permit 10 ft. deep decks to extend into the required rear yards which will exceed the 25 % maximum projection permitted by § 301.1,
6. From B.C.Z.R. § 1B01.2.C.1.c to permit building face to tract boundary setbacks of 27 ft. in lieu of the required 30 ft.,
7. From B.C.Z.R. § 1B01.B.1 pursuant to B.C.Z.R. § 504.2 and CMDP, Division 2, Section A, Residential Standards, to allow a reduction in the required Residential Transition Area (RTA) to allow units to encroach into the required buffer and setback areas (setbacks for units to tract boundary vary from 42-65 ft.) and to exceed the maximum height of 35 ft.,
8. From B.C.Z.R. § 504.2 and CMDP, Division 2, Section A, Residential Standards, to permit a private rear yard area less than 50 sq. ft., and
9. Additional relief as deemed necessary by the Administrative Law Judge (ALJ).

The development and zoning cases were considered at a combined hearing, permitted by Baltimore County Code (B.C.C.) § 32-4-230. 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-1H. The property was posted on December 21, 2015 with the Notice of Hearing Officer's Hearing and Zoning Notice, in compliance with the regulations. The undersigned conducted the hearing on January 22, 2016, 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 professional engineer Richard Matz, with Colbert Matz Rosenfelt, Inc., the consulting firm that prepared the site plan. Patricia A. Malone, Esquire and Adam M. Rosenblatt, 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 Brad Knatz, Real Estate Compliance. Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (DEPS), and Brett Williams from the Department of Planning (DOP). Several members of the community attended the hearing and opposed certain aspects of the project which 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 (with the exception of Ms. Tansey) indicated that the redlined Development Plan addressed any comments submitted by their agency, and they each recommended approval of the Plan. Mr. Williams noted DOP had approved a Pattern Book for the development (Developer's Exhibit 5), and he also presented a school analysis (Baltimore County Exhibit 1) indicating that the area schools are not overcrowded using state guidelines. Ms. Tansey, the County's landscape architect, indicated the Developer provided sufficient land on site to satisfy the Local Open Space regulations though a waiver was granted with regard to certain standards (i.e., width and grade of parcel), as noted in Baltimore County Exhibit 2. Ms. Tansey also noted that as of the date of the hearing a schematic landscape plan had not been approved. Thereafter, in an email dated February

12, 2016, Ms. Tansey indicated she had approved a schematic landscape plan for the project.

In its case in chief, the Developer presented three (3) witnesses, each of whom was accepted as an expert based upon his education, training and experience. First was Zach Lette, a registered landscape architect. Mr. Lette began his testimony by describing his professional experience and background. He noted that the subject property was unique with prominent ridges and many specimen trees. He also testified that a significant amount of time was invested in collaboration with the DOP to put the “best architecture forward” onto Johnnycake Road when designing this project. The witness noted that although the overall tract is 58 acres (zoned DR 10.5), only 36 acres is able to be developed, given the steep slopes, buffers and other environmental constraints. Based on that 36 acre figure, Mr. Lette testified that the property would yield 378 density units, while only 368 units were being proposed. Mr. Lette described in detail the seven (7) different unit types proposed in the project, which would range between 1,800 and 2,400 sq. ft. Mr. Lette testified that the “long vistas” into the forest make this project special.

In response to questions on cross-examination, Mr. Lette confirmed that this was his first involvement in a development project in Baltimore County. He indicated that he did review the 1998 Patapsco-Granite Community Plan, but was not intimately familiar with its contents. The witness also noted that the Plan reveals a natural buffer to be retained between the subject property and the adjoining RC zoned tracts.

The next witness was Richard Matz, a licensed professional engineer. Mr. Matz explained in detail the features on the eight-sheet Development Plan, and also discussed each of the variance requests, as detailed in a subsequent portion of this Order. Mr. Matz testified that the project will comply with current storm water management regulations, and would feature a variety of storm water management devices including bioretention facilities, level spreaders and micro-bio-

retention facilities. Mr. Matz opined that the Developer satisfied all Baltimore County rules and regulations governing the development and zoning requests.

The final witness in the Developer's case was John Rohde, a registered landscape architect. Mr. Rohde testified that his firm prepared and submitted to Baltimore County a special variance request, which would permit the removal of six (6) of 33 specimen trees on the subject property. See, Developer's Exhibit 12. Mr. Rohde noted that the special variance application was granted by Baltimore County in correspondence dated September 29, 2015, which was admitted as Developer's Exhibit 13.

Under the B.C.C., a petition for special variance is granted by the Director of DEPS, and is then considered a recommendation to the Hearing Officer "who may either grant or deny the special variance requested." B.C.C. § 33-6-116(g)(2)(i). Mr. Rohde also correctly noted that although a Developer must show an "unwarranted hardship" to be granted a special variance, the standards applicable thereto are stated in the disjunctive in B.C.C. § 33-6-116(d). In this regard, Mr. Rohde testified that the grant of the special variance involving just six (6) trees (only 2 of which were in good condition) would in no way alter the "essential character of the neighborhood." B.C.C. § 33-6-116(d)(3). I concur, especially considering that over 20 acres of the site will be retained to preserve existing environmental features, and the removal of two (2) healthy trees will in no way alter the "essential character" of this neighborhood. As such, the special variance will be granted in the Order below.

Thereafter, both Cathy Wolfson and Kathleen Skullney, nearby residents, testified concerning their objections to the project. Ms. Wolfson expressed dismay that the property was up zoned in 2008, and stated that acceleration and deceleration lanes would be required to safely navigate Johnnycake Road along the subject property. Ms. Wolfson also reviewed each of the

variance requests, and took umbrage that the Developer presumed such requests would be granted by designing the features into the Plan. In addition, Ms. Wolfson noted that the project was simply too close to RC zoned tracts, and was not a “walkable” development, given that the nearest commercial use or store is located 1.7 miles from the site.

Ms. Skullney echoed many of the same concerns, and she contended that the facts in the case reveal that the variance request should be disapproved. She noted that, as conceded by Mr. Matz, the limitations and environmental constraints on the property were known to the Developer from 2013 forward, and thus were not a surprise. Ms. Skullney also objected to the fact that variance relief was required for each of the 368 units, and she suggested that Mr. Matz did not provide sufficient testimony to justify the variance relief.

The Developer presented one witness in its rebuttal case, Joseph Fortino, who has worked with Lenore Homes for the last four (4) years. Mr. Fortino described his extensive experience in the home building field, and noted that he had developed over 10,000 residential lots during his career. He testified that Lenore is the second largest builder in the United States, and designs projects to achieve a “wow” factor. Mr. Fortino acknowledged the Developer knew about the environmental constraints prior to submitting its plans, and he agreed that such features are found on many development projects of a similar scale and nature. The witness noted that it was difficult to satisfy every rule imposed by a local jurisdiction, but emphasized that quality, not higher density, was the Developer’s ultimate goal. Mr. Fortino testified that the project would not be feasible if all zoning setbacks were observed, and he stressed that it was important to consider things other than just the dictates set forth in “rule books.” In that regard, the witness noted that the more houses it is able to construct at the site, the more amenities it can provide to prospective residents and the community.

ZONING REQUESTS

The Petition for Variance seeks relief from a variety of setbacks and other aspects of the Baltimore County Zoning Regulations (B.C.Z.R). With regard to the RTA variance (listed as request #7), Mr. Lette opined that the grant of setback relief would not be injurious to the community, since the proposed design of the homes is compatible with existing development in the area. He also noted that Johnnycake Road is included within the RTA and that it serves as an effective buffer. Mr. Matz provided more extensive testimony on the zoning requests, both on direct and cross-examination. He indicated that one of the purposes of the variance petition was to “get density” for the project. Mr. Matz also testified most families do not use the rear yard area in townhomes, since children frequently are inside using electronic devices. The witness indicated environmental constraints limited the usable areas of the site and that if variance relief was denied the project would fail given the expense incurred to install the necessary water and sewer infrastructure.

On cross-examination, Mr. Matz reviewed each of the eight (8) variance requests, and confirmed that (at least with respect to variance #1) all 368 units would require zoning relief. The witness thereafter conceded that all 368 lots or units, rather than the overall 58 acre site, must be shown to be unique. In response to a question posed by Ms. Skullney (who is an attorney), the witness agreed that “each variance needs to be approved individually.”

In light of this testimony, and considering the substantial evidentiary burden which must be satisfied to obtain variance relief, I believe the zoning Petition must be denied. Maryland courts have emphasized that variances are “rarely appropriate” and should be granted “sparingly,” and only when a Petitioner is able to prove his property is unique or different in some way from surrounding properties. Cromwell v. Ward, 102 Md. App. 691 (1995).

In this case, the Developer's witnesses did identify certain unique aspects of the overall site (i.e., steep slopes, wetlands and other environmental features). But no evidence was presented to establish that each of the 368 lots was unique or peculiar in any way when compared to neighboring properties. As such, the zoning petition will be denied.

As noted at the outset, this proceeding involved development, zoning and environmental issues, and the standard of review on appeal is different for each. Accordingly, each aspect of the case is set forth in a separate order, which will facilitate further review. The Development Plan is disapproved only because the zoning petition will be denied. In other words, if the requested variances had been granted, the Development Plan would have been approved based upon the testimony of County staff and Developer's experts.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 24th day of **February, 2016**, that the "**PATAPSCO GLEN**" redlined Development Plan in PAI Case No. 01-0584, marked and accepted into evidence as Developer's Exhibit 1A-1H, be and is hereby **DISAPPROVED**, given the denial of zoning relief as sought in Case No. 2016-0109-A.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to § 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R) in Case No. 2016-0109-A to approve the following:

1. From B.C.Z.R. § 1B01.2.C.1.c to permit front building face to property line setbacks ranging from 4 ft. to 20 ft. in lieu of the required 25 ft.,
2. From B.C.Z.R. § 1B01.2.C.1.c to permit rear building face to property line setbacks ranging from 17 ft. to 27 ft. in lieu of the required 30 ft.,
3. From B.C.Z.R. § 1B01.2.C.1.c pursuant to § 504.2 of the B.C.Z.R. and the Comprehensive Manual of Development Policies CMDP, Division II, Section A: Residential Standards, Table VII, to permit side building face to side building face setbacks of 20 ft. in lieu of the required 25 ft.,

4. From § 504.2 and CMDP, Division 2, Section A, Residential Standards, to permit 7 and 8 townhouse units in a group in lieu of the maximum permitted 6 townhouse units in a group,
5. To permit 10 ft. deep decks to extend into the required rear yards which will exceed the 25 % maximum projection permitted by § 301.1,
6. From B.C.Z.R. § 1B01.2.C.1.c to permit building face to tract boundary setbacks of 27 ft. in lieu of the required 30 ft.,
7. From B.C.Z.R. § 1B01.B.1 pursuant to B.C.Z.R. § 504.2 and CMDP, Division 2, Section A, Residential Standards, to allow a reduction in the required Residential Transition Area (RTA) to allow units to encroach into the required buffer and setback areas (setbacks for units to tract boundary vary from 42-65 ft.) and to exceed the maximum height of 35 ft., and
8. From B.C.Z.R. § 504.2 and CMDP, Division 2, Section A, Residential Standards, to permit a private rear yard area less than 50 sq. ft.,

be and is hereby **DENIED**.

IT IS FURTHER ORDERED that the Petition for Special Variance, permitting the removal of six (6) specimen trees at the subject property, be and is hereby **GRANTED**.

Any appeal of this Order shall be taken in accordance with Baltimore County Code, §§ 32-3-401 and 32-4-281.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw