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

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ORDER ON MOTION FOR RECONSIDERATION

Now pending is Developer's Motion for Reconsideration, to which responses have been filed by the Office of People's Counsel and community protestants. The motion will be denied as concerns the variances, although the final order in the case will be amended slightly, as explained below.

Developer's motion raises an interesting issue: in the context of a development case combined with a variance petition, should the "property" being analyzed consist of the entire tract in the aggregate or is each individual lot shown on the development plan a separate property? Although Developer's engineer opined that each lot must be evaluated separately, I believe this is ultimately a question of law. Based upon a review of the briefs, it does not appear as if Maryland courts have squarely addressed the issue.

But in the end it does not matter, because I concur with People's Counsel and protestants that the Developer has not satisfied its burden to show the property is unique (and unlike neighboring properties) in such a way that drives the need for variance relief. The requirements for variance relief are undeniably stringent and have been strictly applied by Maryland courts. As such, the numerous variances requested by Developer must be denied, and the motion for

reconsideration will be denied on this basis.

Of course, and as noted by People's Counsel, the Developer will no doubt be able to submit to the County a "variance free" Development Plan in compliance with the Baltimore County Code (B.C.C.). As noted in the original order, protestants' primary arguments at the hearing related to the variances, and the few issues raised concerning the plan itself (i.e., the alleged need for an acceleration lane at the site) cannot justify its disapproval. Thus, and in keeping with applicable case law, I believe the Development Plan should be approved, subject to two conditions which will account for the denial of the variance petition. People's Counsel v. Elm Street Dev., Inc., 172 Md. App. 690, 703 (2007).

Inasmuch as an appeal seems likely in this scenario, I believe it should not be incumbent upon Developer to appeal the plan disapproval, as would be the case under the original Order. This is more than an issue of semantics; it will avoid putting the Developer in the untenable position of appealing the denial of the development plan, which in its own right was not defective under the regulations. In other words, I believe Developer should be required to appeal only the denial in Case No. 2016-0109-A, which is a separate zoning case combined for purposes of hearing only.

WHEREFORE, for the foregoing reasons, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **28th** day of **March, 2016**, that the Motion for Reconsideration with respect to the petition for variance, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Variance, permitting the removal of six (6) of thirty-three (33) specimen trees on site, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Patapsco Glen Development Plan, be and is hereby APPROVED, subject to the following conditions:

1. Development Plan approval is expressly conditioned upon:

   (a) Grant of variance relief as sought in Case No. 2016-0109-A; or

   (b) Resubmission to Baltimore County of a development plan for the site that complies with the development regulations and does not require variance relief.

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