

IN RE: <b>PLANNED UNIT DEVELOPMENT</b>	*	BEFORE THE
4 <sup>th</sup> Election District		
4 <sup>th</sup> Council District	*	OFFICE OF
<b>(The Residences at Soldiers Delight)</b>	*	ADMINISTRATIVE HEARINGS
Dellcrest Properties 3, LLC &	*	
Dellcrest Properties 4, LLC	*	FOR
<i>Developer</i>	*	BALTIMORE COUNTY
	*	<b>CASE NO. 04-0740</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 of the Baltimore County Code (B.C.C.), which governs planned unit developments (“PUD”). In accordance with that regulation, Developer seeks approval of a Development Plan (the "Plan") prepared by Martin and Phillips Design Associates, Inc., for The Residences at Soldiers Delight (the "subject property"). The proposed development is more particularly described on the two-sheet redlined Plan submitted into evidence and marked as Developer's Exhibit 1A and 1B.

On February 18, 2014, the Baltimore County Council approved Resolution No. 12-14 (Baltimore County Exhibit 4) finding that the Residences at Soldiers Delight PUD is eligible for Baltimore County review in accordance with § 32-4-242 of the B.C.C. The 16.36 acre property is located within the Urban Rural Demarcation Line (URDL) and is zoned ML-IM. The Developer proposes a total of 312 apartment units with ancillary clubhouse, outdoor pool and other common areas with associated enclosed parking situated to the interior of the structure.

The property would be part of the existing Dolfield Business Park, located within the Red Run Employment Corridor, a sub-area of the Owings Mills Growth Area as identified in Master

Plan 2020. As noted in Resolution 12-14 “Master Plan 2020 recommends that any residential development and non-auxiliary retail added to this sub-area should be a true mixed-use concept and promote job creation.”

A 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 September 9, 2015. At the DPC, the Baltimore County agencies responsible for the review of the Development Plan submit written comments regarding whether the plan complies with the various Baltimore County regulations governing land development. The Hearing Officer’s Hearing was held on October 23, 2015.

The property was posted with the Notice of Hearing on September 23, 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 Ken Schmid, Timothy Wentz, Nick Brader, Sidney Emmer, and David Martin, with Martin and Phillips Design Associates, Inc., the engineering firm that prepared the Plan. Patricia A. Malone, Esquire and Robert Hoffman, Esquire, both with Venable, LLP appeared as counsel for the Developer. Several members of the community also attended to obtain additional information about the project.

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): Darryl D. Putty, Project Manager; Dennis A. Kennedy, Development Plans Review (DPR); Jeff Perlow, Office of Zoning Review, and Brad Knatz, Real Estate Compliance. Also appearing on behalf of the County were Lloyd Moxley, Department of Planning (DOP), and Jeff Livingston, Department of Environmental Protection and Sustainability (DEPS). All agency

representatives indicated that the redlined Development Plan (Exhibit 1A and 1B) satisfied all Baltimore County rules and regulations, and their agencies recommended approval of the Plan.

Mr. Moxley presented a school analysis indicating that each of the schools within the relevant district was at or below 115% of stated rated capacity. County Exhibit 1. Although New Town Elementary initially exceeded state rated capacity, a new school (Lyons Mill Elementary) opened in August 2015 which under the law allows this project to proceed. Mr. Moxley also presented a final report from the DOP (County Exhibit 2), as required by the PUD regulations, wherein that agency determined the project satisfied all requirements set forth in B.C.C. § 32-4-245. Mr. Livingston noted DEPS has approved a development stormwater management plan, as required by the PUD regulations. Finally, a waiver of local open space requirements was approved conditioned upon the payment by Developer of \$40,000, as reflected in Baltimore County Exhibit 3.

### **DEVELOPER'S CASE**

The first witness in Developer's case was David Martin, a registered landscape architect accepted as an expert. Mr. Martin explained in general the layout of the development, and testified that the project satisfied the compatibility objectives of the County Code. Mr. Martin indicated a schematic landscape plan has been approved and he opined that the Plan satisfies all requirements set forth in the Baltimore County Zoning Regulations (B.C.Z.R.) and B.C.C. The witness also reviewed each of the requested modification of standards (as shown in a chart on the Development Plan) and opined they were necessary to complete the project.

The next witness was Ken Schmid, who was accepted as an expert in traffic planning. Mr. Schmid described the traffic study prepared by his firm (Developer's Exhibit 7) and testified the project was not located within a deficient or "failing" traffic shed.

The Developer presented two other witnesses in its case, the first of whom was architect Timothy Wentz. Mr. Wentz presented a full color elevation highlighting the design of the project, and the witness described the efforts he made to minimize the scale and massing of the buildings. Mr. Wentz described the various amenities provided throughout the project, and noted that the five-story parking garage is located on the interior of the site and will be surrounded by the apartment buildings, such that it would not be visible from off-site. In conclusion, Mr. Wentz opined that both the design standards and materials chosen for this project were of a higher quality than would be seen in “market rate” apartment complexes.

The final witness was Sidney Emmer, who along with St. John Properties is one of the owners and developers of this project. Mr. Emmer testified he also developed the nearby View at Mill Run apartment complex which he explained has over a 98% occupancy rate. Mr. Emmer noted that this project’s proximity to Soldiers Delight natural resource area provides residents with an ideal opportunity for recreation and open space. The witness stated that he has been involved in various development projects for the Dolfield Boulevard corridor for the past 15 years, and believed that the current project was a “natural next step” to build on the success of those prior projects.

### **COMMUNITY CONCERNS**

Several members of the community attended the hearing, and their primary concern was with traffic along Dolfield Boulevard. Although Dolfield Boulevard has been improved and widened south of the project, the portion of that road to the north of the site (to where it intersects with Red Run Boulevard) is a single lane in each direction and experiences delays and heavy traffic volumes. The Developer’s witnesses noted that although it was not incumbent upon it to do so, the Developer has agreed to widen a portion of Dolfield Boulevard (within the limits of the existing

County right-of-way) and install a left turn single at the intersection of Dolfield Boulevard and Red Run Boulevard. Mr. Schmid stated that while this would not cure in its entirety the traffic delays and congestion along Dolfield Boulevard, it would greatly improve the existing conditions.

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 and the final report submitted by the DOP, establishes each of these elements. The DOP indicated in its final report that the PUD Development Plan was consistent with the zoning and development regulations and the compatibility objectives of the B.C.C. Both Messrs. Martin and Emmer testified the development would be completed to the full extent of the Plan, so

B.C.C. § 32-4-245(c)(3) is satisfied. Mr. Martin also 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. I also find the requested modification of standards are necessary to achieve the intent and purpose of the PUD regulations, which are designed to provide flexibility with respect to the underlying zoning to encourage innovative and unique project designs.

THEREFORE, IT IS ORDERED by this Hearing Officer/Administrative Law Judge this **26<sup>th</sup>** day of **October, 2015**, that the two (2) sheet redlined Development Plan known as “**THE RESIDENCES AT SOLDIERS DELIGHT**” (Developer’s Exhibit 1A and 1B), be and is hereby **APPROVED**, subject to the condition(s) noted below.

- Developer shall provide to the Zoning Review Office a signed copy of the PUD Development Plan.

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