

IN RE: PLANNED UNIT DEVELOPMENT	*	BEFORE THE OFFICE OF
12 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
(7101 Sollers Point Road)		
	*	FOR
FOUNDRY STATION		
Sollers Investors, LLC	*	BALTIMORE COUNTY
<i>Owner/Developer</i>		
	*	CASE NO. 12-0163

* * * * *

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”). Sollers Investors, LLC (“Developer”) seeks approval of a Development Plan (the "Plan") prepared by Morris & Ritchie Associates, Inc., for Foundry Station (the "subject property"). The proposed development is more particularly described on the five (5) sheet redlined Plan submitted into evidence and marked as Developer's Exhibit 1A-1E.

On August 4, 2014, the Baltimore County Council approved Resolution No. 67-14 (Developer’s Exhibit 6, pp. 64-65) finding that the Foundry Station PUD is eligible for Baltimore County review in accordance with § 32-4-241 of the B.C.C. The Developer proposes for the 12.1 acre site 185 single-family attached (townhouse) dwellings with ancillary parking and open space. Currently there is an abandoned distillery on site of which two component structures, the smokestack and water tower, are on the Baltimore County Final Landmarks List at #262. Under the B.C.C., development projects such as this that “involve” an historic structure must be reviewed by the Planning Board. B.C.C. § 32-4-231(a). This matter was referred to the Planning Board on February 24, 2016, and by letter dated May 20, 2016 (Developer’s Exhibit 18) the Planning Board (through its Secretary, Andrea Van Arsdale) issued its decision finding that the “project design

integrates the historic resources in a way that will not create an adverse impact to their integrity and will effectively preserve them.” As required by law, that decision shall be incorporated as part of the final order in this case. B.C.C. § 32-4-232(f).

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 March 16, 2016. At the DPC, the Baltimore County agencies responsible for the review of the Development Plan submit written comments regarding the compliance of the Development Plan with the various Baltimore County regulations governing land development in the County. The Hearing Officer’s Hearing was held on April 7, 2016 and October 14, 2016.

The property was posted with the Notice of Hearing on March 6, 2016 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 Denise Sullivan with Urban Green, Mark Keeley with Traffic Concepts, Mark Powers and Jeff Powers with the Powers Company, and Josh Sharon and Matt Bishop with Morris & Ritchie Associates, Inc., the engineering firm that prepared the Plan. Christopher D. Mudd, Esquire and Neill A. Thupari, Esquire, both with Venable, LLP appeared on behalf of the Developer. Several members of the community attended the hearing 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): Jan M. Cook, Project Manager; Dennis A. Kennedy, Development Plans Review (DPR); Jun Fernando, Office of Zoning Review, and Gigi Hampshire, Real Estate Compliance. Also appearing on behalf of the County were Lloyd T. Moxley, Department of Planning (DOP), and Jeff Livingston, Department of Environmental Protection and Sustainability

(DEPS). All agency representatives (with the exception of DEPS) indicated that the redlined Development Plan (Exhibit 1A-1E) satisfied all Baltimore County rules and regulations, and their agencies recommended approval of the Plan. Mr. Livingston indicated that two sections of DEPS had approved the Plan (Groundwater Management and Environmental Impact Review) but the Stormwater Management section had not (as of April 7, 2016) completed its review of the development Stormwater Management Plan, which must be approved in a PUD case. B.C.C. § 33-4-114(b). By memorandum dated September 8, 2016 (County Exhibit 3), DEPS informed the undersigned the development Stormwater Management Plan had been approved.

DEVELOPER'S CASE

The first witness to testify in Developer's case was Matthew Bishop, a registered landscape architect. Mr. Bishop explained that he has worked on this project for over two years, and has visited the site on three separate occasions. The witness described the various sheets comprising the Development Plan, and explained that the PUD process was used because the Developer needed to obtain an increase in density to account for the significant funds expended for cleanup and demolition at the site. Mr. Bishop described the townhouse project in some detail, and noted there would be two points of ingress and egress, along with a connection to Dundalk High School.

Mr. Bishop testified that the site is not located within a deficient area shown on the Basic Services Maps, and the witness opined that the Developer has satisfied all requirements set forth in the B.C.Z.R. and B.C.C. The witness reviewed the 14 Modifications of Standards requested in the case, and opined that all were necessary to complete the project with an "urbanism" concept, similar to the Towson Green project approved recently. Mr. Bishop also opined that the project constituted a good layout of the site because it was a compact development, and the witness believed the project was also compatible with the surrounding area, where townhomes are

prevalent. Mr. Bishop also testified the project complies with B.C.Z.R. § 430, and that it was in conformance with Master Plan 2020 and the Dundalk-Edgemere Community Plan.

Denise Sullivan, a licensed professional engineer accepted as an expert, was the next witness in Developer's case. Ms. Sullivan described the Response Action Plan (RAP) her firm prepared for the site (Developer's Exhibit 12) and she explained that she has been personally involved with 30 to 40 RAPs during her career. The witness described the various phases of review by Maryland Department of the Environment (MDE) which were performed for this site. Ms. Sullivan testified contaminants are present on this site, and that heavy metals and petroleum-by-products are frequently encountered in urban areas. Ms. Sullivan testified that the MDE approved the RAP in January 2016, as shown in correspondence which was marked as Developer's Exhibit 13.

Ms. Sullivan also noted that environmental cleanup standards are more stringent in a residential setting, and that the "containment remedy" in this case would consist of concrete, asphalt, clean fill, and a warning barrier, totaling a 24 inch thickness. The witness described the MDE review process as "arduous," and explained that quarterly inspections will be required to ensure that the underground contaminants do not pose a risk of harm to residents or the community at large. Ms. Sullivan concluded her testimony by noting that the Home Owners' Association (HOA) would be responsible for maintaining the above-described "cap" at the site and she opined that if the containment remedy as described was implemented the project would not have a detrimental impact upon the health, safety and welfare of the community.

The next witness in Developer's case was Josh Sharon, a licensed professional engineer accepted as an expert. Mr. Sharon provided testimony concerning the proposed stormwater management facilities at the site, as shown on Developer's Exhibit 1C. Mr. Sharon explained that

stormwater would be directed to two underground facilities at the south and west of the site. Mr. Sharon testified that an underground sand filter system would provide water quality control, while the underground system would provide water quantity control for a 24 hour storm. The witness also opined that a suitable outfall was shown on the Plan, and the Bureau of DPR noted in a memorandum dated May 25, 2016 it concurred with this finding. In concluding his testimony, Mr. Sharon noted that no stormwater management currently exists on the site, and he opined that conditions will be much better after the Plan is implemented compared to what exists at the site today. Mr. Sharon stressed that in his opinion there would be no adverse effects on the surrounding community.

The next witness in Developer's case was Mark Keeley, a certified transportation planner accepted as an expert. Mr. Keeley testified that he prepared a Traffic Impact Study for this project (Developer's Exhibit 16) which indicated that all signalized intersections in the vicinity of the project function at a Level of Service "D" or better, and he also noted that there are no failing intersections within the vicinity. The witness testified that no infrastructure or roadway improvements were recommended in the study, and Mr. Keeley concluded that the project would not cause congestion in area roadways and that the Plan provided a safe and convenient network of roads for vehicular circulation.

The final witness in Developer's case was Mark Powers, who is a partner in the entity proposing to complete the project. Mr. Powers explained that he and his brother are partners in the Powers Company, which is a developer of both residential and commercial properties. The witness explained that his firm completed the Yorkway project which is near the subject property, and explained that they have owned this site for nearly eight years. Mr. Powers testified he

anticipates a capital investment of \$3 million to complete the remediation and demolition work at the site, and stressed that his firm has never failed to complete a development project.

PROTESTANTS' CASE

Several members of the community attended the hearing and identified concerns with the project. First was Russell Donnelly, an environmental analyst who resides in the area. Mr. Donnelly submitted an exhibit outlining his testimony (Protestants' Exhibit 1) and he questioned the accuracy of certain information shown on the Development Plan. Mr. Donnelly also indicated a stream was located on the site, although John Canoles of Eco-Science Professionals, Inc. conducted a field review and concluded "that there are no wetland, stream, or buffer constraints that impact the subject property." Developer's Exhibit 19.

Glenn Shaffer, a member of the Old Dundalk Community Association, testified that he and his organization were concerned with the number of townhomes proposed for the project. Mr. Shaffer testified that the community association would prefer 160 homes instead of the 185 units shown on the Development Plan. The witness was also concerned the HOA would be responsible for maintaining the stormwater management facilities, and he noted the community would prefer some sort of condition or covenant whereby the proposed homes could not be converted into rental units.

The final community witness to testify was Peter Muntjan. Mr. Muntjan testified that in his opinion the developers of this project are not trustworthy, and that the site is problematic and dangerous. Mr. Muntjan's concerns were also set forth in a letter dated August 5, 2015, which was marked as Protestants' Exhibit 2.

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, establishes each of these elements. The DOP indicated in its final report dated March 16, 2016 that the PUD Development Plan was in conformance with the Master Plan, satisfied B.C.Z.R. § 430 concerning PUDs and the compatibility requirements of B.C.C. § 32-4-402. The DOP noted the property is designated in the Master Plan as a T4 (general urban) transect, which encourages “rowhouses” within a “residential urban fabric.”

Mr. Bishop testified the Developer complied with B.C.Z.R. § 430 and that the special exception standards in B.C.Z.R. § 502.1 were met. The witness also opined the “urbanism”

concept shown in the pattern book and plans constituted a good, compact design. Mr. Bishop (and the DOP, in its final report) also opined the modification of standards were necessary to achieve the density for the “urbanism” concept. Finally, Mr. Bishop testified the Developer and its team of consultants were all experienced, so that the development would be completed to the full extent of the Plan. As such, B.C.C. § 32-4-245(c)(3) is satisfied. In light of this testimony, and the positive recommendation of all County reviewing agencies, the PUD Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Hearing Officer/Administrative Law Judge this **21st** day of **October, 2016**, that the five (5) sheet redlined Development Plan known as “**FOUNDRY STATION**” (Developer’s Exhibit 1A-1E), be and is hereby **APPROVED**.

IT IS FURTHER ORDERED that the decision of the Planning Board dated May 20, 2016 (a copy of which is attached hereto) be and is hereby incorporated as a part of this final order.

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

- Developer shall provide a residential fence (6 ft. in height) along the western boundary of the property to screen the view from the adjacent homes located on Tyler Road.

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