

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
9 th Election District		
5th Council District	*	ADMINISTRATIVE HEARINGS
(fka 706 Washington Ave)		
	*	FOR
STUDIOUS - 100 W. Joppa Road		
	*	BALTIMORE COUNTY
Manzo Development, LLC	*	CASE NO. 09-0867
<i>Owner/Applicant</i>		

* * * * *

**ADMINISTRATIVE LAW JUDGE’S (“ALJ”)
DEVELOPMENT PLAN OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for a public hearing on a development proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code (“BCC”). Manzo Development, LLC, Owner/Applicant (herein known as “Developer”) submitted for approval a 7-sheet redlined Development Plan (the "Redlined Development Plan") for a project called “STUDIOUS” at the property addressed as 100 W. Joppa Rd. (formerly 706 Washington Avenue) (the “Property”). The Developer proposes a 16-story, mixed-use dormitory apartment building (350 beds) with 528 sf of retail space, and 2 stories of underground parking.

Details of the proposed development are more fully depicted on the Redlined Development Plan. (Dev. Ex. 1). The Property was posted with the Notice of Hearing Officer’s Hearing (“HOH”) on January 13, 2021, in compliance with the regulations. Due to the COVID-19 pandemic, a public virtual WebEx hearing in lieu of an in-person public hearing was held on February 11, 2021. In attendance at the HOH in support of the Redlined Development Plan was Mark Manzo, a member of the Developer along with Richard E. Matz, PE from Colbert, Matz, Rosenfelt, the firm that prepared and sealed the Redlined Development Plan. David Karceski,

Esquire, Christopher D. Mudd, Esquire and Venable, LLP, represented the Developer. Several neighbors and interested citizens attended the hearing in opposition as set forth herein.

AGENCY WITNESSES

Numerous representatives of the various Baltimore County agencies who reviewed the Redlined Development Plan also attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections (“PAI”): Jerry S. Chen, Project Manager; Michael Viscarra of Development Plans Review (“DPR”); Jim Hermann on behalf of DPR and Recreation & Parks (R&P); LaChelle Imwiko from Real Estate Compliance; and Jeff Perlow from Office of Zoning Review (“OZR”). Also appearing on behalf of the County were Steve Ford from the Department of Environmental Protection and Sustainability (“DEPS”), and Jenifer G. Nugent from the Department of Planning (“DOP”).

Each County agency representative indicated the Redlined Development Plan addressed all comments submitted by their agency, and each recommended approval. Steve Ford from DEPS testified on behalf of 3 departments within DEPS: Storm Water Management (“SWM”), Groundwater Management (“GWM”) and Environmental Impact Review (“EIR”). SWM approved the Concept SWM Plan on May 14, 2020. (County Ex. 1). GWM noted that the Property is vacant and that public water and sewer are available. (*Id.*). EIR had no comments. (*Id.*). All 3 of those departments recommended approval.

Jenifer Nugent from DOP testified that the Property is zoned business-major, downtown Towson district (BM, DT). The Property is designated as T-6 Urban Core in 2020 Master Plan (“MP 2020”). The T-6 Urban Core designation has the highest density and height with the greatest variety of uses and civic buildings of regional importance. Buildings in the T-6 Urban Core are oriented toward the street with minimized setbacks to reinforce a street wall. The T-6 Urban Core

emphasizes large blocks, street planting and buildings set close to wider sidewalks. It encourages residential and redevelopment projects that support businesses and enhance public spaces. (MP 2020, p. 85). Ms. Nugent provided the DOP Comments dated January 26, 2021 prepared for the Development Review Committee ('DRC') Meeting on January 27, 2021 (the "DOP Report"). (County Ex. 2). The DOP concluded that development of this commercial site into a high-rise, residential development that is in walking distance to many employment and amenity opportunities, fits into the T-6 Urban Core.

Ms. Nugent explained that the Property is also in the Downtown Towson Overlay District ("DTD") as set forth in Baltimore County Zoning Regulations ("BCZR") §259.16. The DTD was enacted to ensure that redevelopment of Towson results in high-quality, walkable, mixed-use development with an urban design. (County Ex. 2). In the DTD, there is less emphasis on classical zoning rules and regulations and more on characteristics of design that make an urban area function. (*Id.*). The design guidelines for the DTD are set forth in BCZR, §259.16.A.6, and categorized as: environmental sustainability; block configuration/site design; parking; downtown open space; building principles/architecture; building materials; lighting; and signs.

Applying the design guidelines, the DOP performed an initial analysis of the proposed development plan and of the preliminary Design Review Book (Dev. Ex. 8) (the "Preliminary Design Review Book"). That analysis resulted in an initial DOP report dated July 8, 2020 which commented that the development: addressed the pedestrian realm through streetscape design and amenities; ensured activity of the building at street level; provided some open space to give relief and interest to the streetscape as well as using architectural and landscape elements to create a sense of place; provided ADA access; and ensured architectural design within the T-6 Urban Core.

Having performed this initial analysis, DOP then presented the project to the Design Review Panel (“DRP”). (BCC, 32-4-203 *et seq.*). Ms. Nugent testified that the DRP held 2 meetings on this project: July 8, 2020 and September 9, 2020. At the later DRP meeting, the DRP gave conditional approval for the initial Development Plan and for the Preliminary Design Review Book with conditions as set forth in the September 9, 2020 disposition of DRP. Some of these conditions are set forth in the DOP Report dated January 26, 2021. (County Ex. 2). As requested by the DRP, the Developer submitted for final review the Redlined Development Plan and a Final Design Review Book (the “Final Design Review Book”) (Dev. Ex. 13) incorporating the DRP conditions. On November 17, 2020, the DRP recommended approval to PAI.

Ms. Nugent also explained that student dormitories are not exempt from the Adequate Public Facilities Ordinance, School Impact Analysis (“SIA”) under BCC, §32-6-103. The SIA analysis is listed on the Redlined Development Plan. (Dev. Ex. 1). Ms. Nugent confirmed that while West Towson Elementary School and Dumbarton Middle School were operating at below the State Rated Capacity (“SRC”), Towson High School was operating above the SRC (129%). (*Id.*). That analysis notwithstanding, Ms. Nugent confirmed the total number of pupils generated from this project is zero, thus having no impact here. (*Id.*). As a result, DOP recommended approval of the Redlined Development Plan. (County Ex. 2).

Michael Viscarra testified on behalf of DPR which agency is responsible for reviewing roads, sewers, storm drains, floodplains and traffic impacts. Mr. Viscarra acknowledged an email from DPR dated October 6, 2020 stating that there were no outstanding issues in regard to traffic for this project. (County Ex. 3). DPR reached this conclusion after reviewing the Developer’s traffic impact analysis and a letter from State Highway Administration (“SHA”) dated September 2, 2020. (Dev. Ex. 10). As a result, DPR recommended approval.

On behalf of DPR, Jim Hermann testified that the Schematic Landscape Plan was approved on February 4, 2021. (County Ex. 4; Dev. Ex. 6). Mr. Hermann added that a Final Landscape Plan would be reviewed in Phase II of the development process. During Phase II, details about hardscape and the type of plants will be reviewed. On behalf of R&P, Mr. Hermann explained that the project must provide 88,000 sf of Local Open Space under BCC, §32-6-108. The total square feet is calculated based on the number of beds. For this project there are 350 proposed beds and 4 beds per unit or 88 dormitory units (1,000 sf per unit x 88 units = 88,000 sf) (BCC, §32-6-108(c)). (County Ex. 5). Given the size and location of the Property, R&P determined that there was no suitable land available to meet the 88,000 sf Open Space requirement, either on-site or off-site. BCC, §32-6-108(e)(3)(ii) requires that off-site open space for developments in the DTD should be provided within the DTD or within one (1) mile of the DTD. (*Id.*) Due to the lack of off-site Open Space, the Developer requested a waiver and to pay a fee-in-lieu thereof.

In this case, there is no fee required to be paid under Tier 5 of Open Space Tier Calculation Schedule because the number of units to be developed is between 1-100. (County Ex. 5). This fact notwithstanding, Mr. Hermann submitted letters indicating that the Developer has volunteering to make monetary donations to the following groups: YMCA of Towson (\$30,000.00), West Towson Neighborhood Association (\$20,000.00) and Immaculate Conception Church of Towson and School (\$65,000.00). (*Id.*).

Mr. Herman explained that this project is also required to provide open space under DTD regulations equal to 5% of the gross acreage of the Property or 0.02245 acres (“DTD Open Space”). (BCZR, §259.16.A.6.d). Mr. Hermann reviewed the Redlined Development Plan and agreed that, by providing ground level amenities such as public seating areas which totaled 1,338 sf or 0.031 acres, the project exceeds this DTD Open Space requirement. (County Ex. 5).

LaChelle Imwiko of REC testified that she reviewed the Redlined Development Plan on February 6, 2021. She stated that there was one minor revision which changed a label from ‘Siteline Easement Area’ to ‘Highway Widening Area’. (County Ex. 6; Dev. Ex. 1). With that, REC recommended approval. Finally, Jeff Perlow, the Acting Zoning Director from OZR testified that the DTD is unique as it does not follow classic area and height regulations. BCZR, 259.16 allows the DOP and DRP to review architectural and design features and to make recommendations to those features. As such, OZR has no additional comments and recommended approval of the Redlined Development Plan.

Lastly, Mr. Chen, the PAI project manager acknowledged receipt of a letter dated February 9, 2021 from the Baltimore County Fire Marshall’s Office which stated that all comments were addressed in the Redlined Development Plan, particularly in regard to the relocation of the fire hydrant on W. Joppa Rd. (County Ex. 7).

DEVELOPER’S CASE

Testifying for the Developer was Richard E. Matz, PE with Colbert, Matz, Rosenfelt. Mr. Matz was accepted as an expert professional engineer and in the BCZR and in the development regular in the BCC. (Dev. Ex. 2). Mr. Matz has been a registered professional engineer in the State of Maryland for 37 years and has been accepted as an expert before OAH in several hundred cases.

Mr. Matz testified that he is familiar with the Property and has been working on its development since 2016. He prepared and sealed the Redlined Development Plan. (Dev. Ex. 1). The Property is a vacant parcel fronting on three (3) streets: on the east by Washington Avenue, on the north by Ware Avenue, and on the south by W. Joppa Rd. (Dev. Ex. 3A). Adjoining the Property to the west are single-family homes converted to offices.

The Property is located in the Towson Commercial Revitalization District; one of 14 commercial revitalization districts in MP 2020 (“CRD”). (Dev. Ex. 4). The CRD is targeted to capitalize upon downtown development patterns and to retain and attract quality retail, office, service and residential uses that create well-balanced and economically vital mixed-use. (MP 2020, pp. 137-140). The CRD is used to promote new and redevelopment. Additionally, as indicated by the DOP, Mr. Matz confirmed that the Property is located in the T-6 Urban Core.

Extending beyond the immediate Property boundaries are the Penthouse Condominiums (28 Allegheny Avenue), a 19-story +/- building, and the Flats Apartment Complex, a 5-story +/- building with a free-standing Sun Trust bank (703 Washington Avenue). (Dev. Ex. 3B). To the north on Ware Avenue is a 9-story parking garage owned by the Baltimore County Revenue Authority. Beyond the immediate adjacent converted office buildings to the west is Immaculate Conception Church, School and parking lots. To the south across W. Joppa Rd. is a 3-story +/- office building (600 Washington Avenue).

Mr. Matz proceeded through the Redlined Development Plan, highlighting some of the changes made in red to address the comments of the County agencies including the proposed road frontage improvements, the fire hydrant location, no-parking signs, future road widening label, name change for project, and the entrance location on W. Joppa Rd.

From the Redlined Development Plan enlargements (Dev. Ex. 1B), Mr. Matz explained that there are two (2) proposed levels of underground parking: one entrance onto Level 2 from Ware Avenue will have 18 parking spaces plus an additional motorcycle parking space (the “Ware Garage”); a second garage entrance is accessed from W. Joppa Rd. onto Level 1 where there are 17 parking spaces (the “Joppa Garage”). (Dev. Ex. 1C). The underground garages were designed to account for a higher elevation along Ware Rd. and a lower elevation along W. Joppa Rd. The

access points for both garages act as both entrances and exits.

Mr. Matz emphasized that there are no minimum parking requirements in the DTD regulations. (BCZR, §259.16.A.4.). In this case, the Developer has voluntarily entered into agreement with the Baltimore County Revenue Authority for additional parking at the County garage on Ware Avenue (75 spaces) and with MidAtlantic Properties for a private parking facility south of the Property (100 spaces).

He highlighted that the proposed project is a 16-story mixed-use dormitory apartment building. (Dev. 1B). On Level 2 at the Ware Garage entrance, and from the outside entrance at the corner of Ware Avenue and Washington Avenue, is a café with seating areas, open to the students and the general public (528 sf). On the Level 3 is an open-air terrace, (493 sf) with a conference room (252 sf) and a community room (1,390 sf). On Level 4 are student dorm units and a fitness center (1,560 sf). In total, the dorm units will occupy some or all of Levels 3 through 16. On Level 16 is a rooftop terrace (1,870 sf) and sky lounge (940 sf). (Dev. Ex. 1C). Mr. Matz emphasized that there are no height regulations in the DT District. (BCZR, §259.16.A).

In regard to open space, Mr. Matz reiterated the testimony of Jim Hermann as to the amount of required Local Open Space (88,000 sf). Mr. Matz stated that there was no land available on-site, or within the DTD, or within 1 mile of the DTD. As a result, his firm requested a waiver of Local Open Space and requested to pay a fee-in-lieu of waiver. Mr. Matz opined that, as shown on the Redlined Development Plan, the project exceeds the requirement for DTD Open Space. (BCZR, §259.16.A.6.d.).

The second witness to testify for the Developer was Walter J. Ploskon who was accepted as an expert in architecture. (Dev. Ex. 7). Mr. Ploskon is a registered architect in MD, VA and DC and in seven (7) other states. He is certified in LEED building. He has been involved in the

project since March of 2020. In preparation for the first DRP meeting, he prepared the Preliminary Design Review Book dated August 25, 2020. (Dev. Ex. 8). The Preliminary Design Review Book describes the project as housing for undergraduate and graduate students with 350 beds and modern amenities including an elevated terrace (Level 3), café (Level 2) and rooftop lounge (Level 16).

Mr. Ploskon indicated that the exterior design is visible from all sides of the building as seen in the bird's eye view photo. (Dev. Ex. 8, p. 34-39). The exterior is made of steel and concrete. (*Id.* p. 3). From the ground floor to the rooftop, he said that high quality materials are used. Using the existing topography, the building is designed to step up with the grade and the building sections encourage a variety of scale. Mr. Ploskon added that the scale of the proposed building is also in proportion to the adjacent and neighboring buildings with the Penthouse being the tallest. (Dev. Ex. 8, pp. 34-39).

From the corner of Ware and Washington Avenues, and the corner of W. Joppa Rd. and Washington Avenue, the site lines are wide. Facing Washington Avenue, the street scape is enhanced with an outdoor, grand stairs (the "Grand Stairs") which permits entry into Level 2 and the café. A pedestrian realm is shown in the Preliminary Design Review Book. (Dev. Ex. 8, p. 41). The hardscape shows red brick pavers on the sidewalks and grey pavers on the street corners, along with accessible ramps.

Mr. Ploskon stated that the building will have a basement which could be used for storage or additional parking. There are bike racks located in the Joppa Garage. The fitness center on Level 4 has a wall of glass windows which face an interior courtyard. A green wall of live plants will adorn the exterior of the Joppa Garage as well as the wall next to the Grand Stairs. (Dev. Ex. 8, p. 40). As shown in the building renderings, portions of the building cantilever over the sidewalk

which, from the street level, gives the perspective of a 2-story building. (*Id.*). The rooftop terrace is back-lit as seen from the street level. It has the feel of a ground level terrace. (Dev. Ex. 13, p. 42). The building sign ‘Studios’ and signs above the garage entrances will also have back lighting. All of the signs will be made with high quality materials. (Dev. Ex. 13, p. 58).

On cross examination, Beth Miller of Green Towson Alliance (“GTA”) questioned him on the differences between the Preliminary Design Review Book (Dev. Ex. 8) and for the Final Design Review Book (Dev. Ex. 13) as approved by the DRP. Ms. Miller inquired as to the westward facing unit windows; measurement of the café space; and future development of the western properties which may require reconfiguration of the garages. Sandy Gurchik, The Penthouse at 28 Allegheny Avenue inquired as to the hours for the rooftop terrace and whether the building will have soundproofing.

The next witness to testify for the Developer was Mark Manzo, 1022 West 41st Street, Baltimore, MD 21211. Mr. Manzo is a member of Manzo Development, LLC. Mr. Manzo explained that he and his father have owned the Property since 2004. Prior to this mixed-use, dormitory apartment building, they explored other development options such as senior housing, condominiums, and townhomes. Mr. Manzo confirmed that the Final Design Review Book was submitted to the DRP at the meeting on September 25, 2020 which included the changes and conditions required by the DRP. He stated that the Final Design Review Book was approved by DRP. (Dev. Ex. 13). Mr. Manzo clarified that some of the changes requested by the DRP were trees along Washington Avenue which replaced shrubs; the removal of a star from the ‘Studios’ sign; the change from colored lights to white lighting and the elimination of lights illuminating westward. The Final Design Review Book depicts the view of the building with the back lighting at night. (Dev. Ex. 13, pp. 40-42).

In response to questions from Ms. Miller, Mr. Manzo testified that the cantilevered portion of the building which extends into the County's right of way will be memorialized by way of a franchise agreement with the County, requiring the Developer to pay an annual fee for that portion of the Property. In response to Ms. Gurchik's question, Mr. Manzo confirmed that rooftop terrace and open space areas will close at 10:00 pm. Mr. Manzo added that the building is designed as a study environment; it will have noise control measures and security guards.

After Mr. Manzo testified, Mr. Ploskin confirmed that he was aware of the changes made to the Preliminary Design Review Book (Dev. Ex. 8) which ultimately became the Final Design Review Book (Dev. Ex. 13). Ms. Miller then asked additional questions of Mr. Ploskin in regard to the height of the soffit on the Level 3, the measurement of the sidewalk sections and the size of the tree pits for the trees on the street.

COMMUNITY WITNESSES

Beth Miller, 563 Murdock Rd., Baltimore, MD 21212 is an architect and has been admitted as an expert in OAH hearings. Ms. Miller testified as a representative of GTA and was part of the 2016 legislative group which made recommendations for the enactment the DTD Regulations in BCZR, §259.16. Ms. Miller opined that the proposed building violates BCZR, §259.16 and provided a diagram prepared by GTA showing that the proposed building is not setback from the street to the same degree as the other buildings along Washington Avenue. (Prot. Ex. 1). In short, Ms. Miller believes that the proposed building is too big for the Property.

In addition, she referenced MP 2020 (p. 82) which requires broad sidewalks for pedestrian traffic and that buildings align to a build-to line to produce a sense of enclosure on the street to create a distinct public space. Ms. Miller also cited BCZR, § 235B.4.B.2 entitled, 'Open space ratio; streetscaping' which reads as follows:

B. In the Downtown Towson District:

* * * *

2. The width of the streetscape area shall be consistent with the adjacent setback of neighboring properties, based upon the recommendations of the Director of Planning. In no case shall the width of the streetscape exceed 25 feet.

Ms. Miller testified that the building and the cantilevered portion is built too close to Washington Avenue. She added that there are no other cantilevered buildings in Towson. She highlighted that future widening of Washington Avenue would require tearing down the proposed building and therefore, as a practical matter, Washington Avenue can never be widened. It was Ms. Miller's opinion that housing should not be brought into DTD. She continued that the proposed 50 ft. street trees will not grow underneath a cantilever. Ms. Miller took issue with the lack of public access to the bike racks; the limited space between café seating; the proposed DTD Open Space not contributing to activities; the building height above Level 4 creating a wind tunnel; the storm water waiver; and the burden of adding 350 beds to the public sewer system which could impede the capacity of the Jones Falls.

Lorrie Geiss, 418 Hillen Rd., Towson, MD 21286, is the President of Towson Communities Alliance ('TCA') which comprises 30 communities. TCA opposes the project finding that the size and scope are out of proportion with size of the Property. TCA finds that the building footprint is too large and does not represent walkable Towson. There are no future improvements planned for the additional traffic and no bike lanes proposed. TCA finds the cantilever creates a 'cave-like' building and inhibits the growth of the street trees. Ms. Geiss admitted on cross examination that West Towson Community Association is part of TCA but supports the project.

Sandy Gurchik, 28 Allegheny Avenue, is the President of the Board of Directors of the Penthouse Condominiums. Ms. Gurchik requests that any Order in this case contain conditions

that: (1) the Penthouse underground parking lot will not be used as the overflow parking for the project; and (2) the rooftop terrace including the skyline lounge and all open space areas will be closed at 10:00 pm each night.

Developer's Rebuttal Case.

Developer had 4 witnesses testify in rebuttal:

Sally Malena was admitted as a registered landscape architect. (Dev. Ex. 5). Ms. Malena, who works at Human, Rohde has been admitted as an expert many times over the last 20 years. Ms. Malena prepared and sealed the Schematic Landscape Plan. (County Ex. 4; Dev. Ex. 6). It was her opinion that the proposed street trees will thrive because the size of the interior tree pits is 4 ft. x 12 ft. (not 4 ft. x 4 ft.). Additionally, the Developer is proposing to plant Red-Bud trees which are native plants and survive in shade in the event the cantilever blocks sunlight. (Dev. Ex. 13, p. 37). She emphasized that the Developer will be required to maintain and replace trees after the Final Landscape Plan is approved.

Walter Ploskon testified in rebuttal to address the issue of 'pedestrian realm'. He opined that the space below the cantilever will not be 'cave-like' because the height of the cantilever at 21 ft. is shallow in relation to the width of 31 ft. These dimensions do not create a 'cave-like' feel.

In regard to impact on the sewer system, Richard Matz testified that there is no deficiency in the sewer system as indicated by the Basic Sewer Map adopted May 18, 2020. (Dev. Ex. 14). He opined the Baltimore County Quarterly Report dated July 1, 2020 through September 30, 2020 issued pursuant to a Consent Decree between Baltimore County and Baltimore City requires repairs to the sewer line. Mr. Matz testified that as of September 6, 2019, only 10 sewer manholes are left to be marked as 'repaired' because they are awaiting right of way easements with the County. (*Id.*, pp. 25-26). With regard to this project, Mr. Matz testified that the Department of

Public Works did not voice any concerns about the downstream sewer line and did not require any improvements to the sewer system. In Phase II, the design of the sewer connection to the Property will be reviewed.

Lastly, Mr. Manzo confirmed again that overflow parking will not include the Penthouse parking garage. He also stated that all loading and unloading for the building will occur on either W. Joppa Rd. or Ware Ave, not on Washington Avenue. The garage access points have height clearance for delivery vehicles. Finally, Mr. Manzo testified the height of the building was reduced from 185 ft. to 165 ft. and the number of beds has been reduced from 482 to 350 beds.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The BCC provides that the “Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations.” BCC § 32-4-229. In *People’s Counsel v. Elm Street Development, Inc.*, 172 Md. App. 690 (2007), the Court of Special Appeals held that if the county agencies recommend approval of a development plan, it is “then up to [protestants] to provide evidence rebutting the Director’s recommendations.” *Id.* at 703. It should also be noted that in Baltimore County “the development process is indeed an ongoing process, and the hearing officer’s affirmation of the plan is just the first step.” *Monkton Preservation Association, et al. v. Gaylord Brooks Realty Corp.*, 107 Md. App. 573, 585 (1996). Indeed, the County agencies continue to review a developer’s evolving plans and construction activities through every phase of the development process to ensure compliance with all County laws and regulations.

In reviewing MP 2020, Towson is one of 14 CRDs in Baltimore County. As noted, this Property is in the Towson CRD. (Dev. Ex. 4). As it pertains to this mixed-use, dormitory development, MP 2020 describes CRD as follows:

The most successful downtowns have a mix of synergetic uses that support each other. Downtown housing and office uses have residents and employees that patronize retail shops, restaurants and services.

(MP 2020, p. 139). In describing CRDs, MP 2020 mentions the importance of universities such as Towson University being located in CRDs:

Institutional uses, supply a high number of patrons and employees for retail and restaurants, and students for downtown housing.

(*Id.*). There is also a recognition in MP 2020 that redevelopment costs can be higher particularly with regard to parking:

Redevelopment costs can be higher with land assemblage and parking.

(*Id.*). The policies outlined by the CRDs recognize the need for mixed-use residential buildings:

(1) to retain and attract quality retail, office, service, residential, entertainment and institutional uses that create well balanced and economically vital mixed use.

(2) improve the appearance and walkability of the Districts.

(*Id.* pp.139-140).

In addition to being in a CRD, MP 2020 places the Property in the T-6 Urban Core. It is notable that the T-6 Urban Core is found in only one (1) area of the County and includes Towson. (MP 2020, p. 28). MP 2020 describes the T-6 Urban Core as having the highest density and height with the greatest variety of uses characterized by larger blocks, streets which have steady street tree plantings, and buildings set close to wide sidewalks. (MP 2020, p. 29). Building placement is described as:

Shallow setbacks or none;

Buildings oriented to street, defining a street wall;

Typical building height is 4-plus story with a few shorter buildings.

(MP 2020, p. 30). (*Emphasis Added*).

In addition to the CRD and the T-6 Urban Core Zone, the Property, with its underlying BM zoning, is also located in the DTD and is regulated by BCZR, §259.16. Pursuant to Bill Nos. 49-2016 and 86-2016 (effective on July 5, 2016), the purpose of the DTD is to help foster redevelopment of Towson and make it into a premier, walkable, mixed-use hub of activity. (BCZR, §259.16.A). DTD is a new and unique district because it requires performance and design based-review. As such, there are no height or area requirements, and no minimum parking requirements. (BCZR, §259.16.A.2 and 4).

The DTD delegates performance and design review to the DOP and DRP who are charged with making recommendations about a proposed development. (BCZR, §259.16.A.6). Toward that end, there are eight (8) non-mandatory guidelines for the DOP and DRP to consider during their review of the urban site design and architecture: (1) environmental sustainability; (2) block configuration/site design; (3) parking; (4) downtown open space; (5) building principles/architecture; (6) building materials; (7) lighting; and (8) signage. In this case, the DOP and DRP reviewed the Redlined Development Plan (Dev. Ex. 1) and the Preliminary Design Book (Dev. Ex. 8) and gave conditional approval of the same, subject to certain conditions/changes. Some of those conditions are listed in the DOP Report dated January 26, 2021. (County Ex. 2).

The testimony from Ms. Nugent and the Developer's witnesses was that the Preliminary Design Review Book (Dev. Ex. 8) incorporated the requested DRP changes which became the Final Design Review Book. (Dev. Ex. 13). Mr. Ploskon, the Developer's architect, described the unique architectural features and high-quality building materials which are detailed in therein. (*Id.*). Based on my review of the Final Design Review Book, I find that the project as depicted in the renderings meets all of the 8 design guidelines set forth in BCZR, §259.16.A.6.

Under subsection 6.a(2) ‘Environmental sustainability,’ I find the storm water management facility is integrated into the building design. DEPS approved the Concept SWM Plan on May 14, 2020. (County Ex. 1). Under Subsections 6.a.(4) and (6), the testimony of Ms. Malena is that the Developer will plant native, Red Bud trees in large tree pits along Washington Avenue. Additionally, the open-air terrace on Level 3 can be seen from Level 16 as well as the open-air roof top terrace with a fire pit on Level 16 (Dev. 13, p. 42) meets Subsections 6.a(7) and (8). The use of green live walls on both the Washington Avenue façade and the Joppa Garage is a sustainable practice, is aesthetically pleasing while also providing environmental benefits. (Dev. Ex. 13, pp. 27-28). [Subsection a (4) and (8)].

With regard to Subsection b(1) ‘Block configuration/site design,’ a building height comparison chart shows that the proposed building (165 ft) is significantly shorter than the Penthouse Condominiums (261 ft). (Dev. Ex. 13, p. 14). The Penthouse, the Flats, the Baltimore County Revenue Authority all consume most, if not all, of the blocks upon which they sit. The proposed street scape design with Grand Stairs provides a gathering area along Washington Avenue. The café, street trees and wide sidewalks create a cohesive pedestrian realm along with the cantilevered façade which frames the public street scape. As such, I find that it meets Subsection b (1) and (3). I also find that those pedestrian amenities in conjunction with the variety of building materials including glass, steel, concrete with dark and light contrasts, break up the large building wall expanses under Subsection b (6) and (7).

With regard to parking, the underground garages are architecturally friendly, and integrated into both the topography and the building design, with attractive identification signs. The Joppa and Ware Garages are located away from the center entrance point at Washington Avenue. [Subsection c (a), (d) and (g)]. The Redlined Development Plan indicates that the DTD Open

Space has been exceeded under Subsection 6 (d). The DTD Open space is accessible to the public and adds green space, varied colors of brick pavers, street trees, bike racks and pedestrian gathering spots to what has been a vacant parking lot. [Subsection 6.d.].

As it pertains to ‘Building principles/architecture’ under Subsection 6.e. and ‘Building Materials’ under Subsection 6.f, I find the detailed renderings and information in the Final Design Review Book accurately portray the high-quality of innovative design for this building. Through the use of the cantilever, the open terraces, the public street scape areas, mix of light and dark building materials, concrete and steel walls with the varying window sizes, reflect the design objectives of the DTD guidelines.

Finally, both the proposed backlighting of the rooftop terrace and backlighting on the STUDIOUS sign and garage signs provide visual interest as well as comfort and safety for residents and pedestrians. [Subsection 6.g and h]. The street lights provide additional safety along the pedestrian realm of Washington Avenue. The signs provide not only identification of the building and garages but add visual interest and complement the building’s architecture. (*Id.*).

Accordingly, as addressed in MP 2020 in regard to CRD, the T-6 Urban Core, as well as the DTD regulations in BCZR, §256.16 as above, I do not agree with Ms. Miller’s argument that the proposed building must be set back from Washington Avenue to the same degree as the other buildings depicted on the GTA Diagram. (Prot. Ex. 1). As I read the guideline for ‘Block configuration/site design’ in BCZR, §259.16.A.6.b: “Block configuration should respect adjacent buildings and should result in a cohesive pedestrian realm along streets and alleys”, it does not require a specific numerical setback from a street. To the contrary, the express language in BCZR, §259.16.A.2 states that: “All properties are exempt from front, side or rear yard setbacks or any setbacks from the center line of any street.” It is significant here that the proposed building meets

the objectives of the T-6 Urban Core which states that buildings shall have ‘shallow setbacks’ or *no setbacks at all*. (MP 2020, p. 30). The minimized setbacks in the T-6 Urban Core reinforce the street wall.

As to the block configuration, size and scope of this project on this Property, I find the indoor and outdoor amenities including the Grand Stairs, ensures that activities are directed to the street level. Thus, from the perspective of a pedestrian, the cantilever, café, outdoor seating, and access to amenities on Levels 2 and 3, is inviting and less imposing than many commercial or residential high rises in Towson. These features provide the perspective of a 2-story building from street level rather than a 16-story building. The Penthouse, the Flats, the 600 Washington Avenue office building, the Baltimore County Revenue Authority parking garage each expand to the boundaries on the lots upon which they are situated. The Penthouse has street trees along Allegheny Avenue but is otherwise a massive building that spans the entire block between Allegheny and W. Joppa Rd. The 600 Washington Avenue office building has very little landscaping and consumes the entire block between W. Joppa Rd and W. Allegheny Avenue. This pattern of large commercial buildings on small blocks is prevalent throughout Towson. (Dev. Ex. 3).

With regard to Ms. Miller’s argument under BCZR, §235.B.4.B.2 that the proposed width of the street scape area is not consistent with adjacent building setbacks, the Director of DOP, based upon the DRP condition to “increase the sidewalk widths” and to maintain “6 feet minimum pedestrian clear widths” (County Ex. 2), recommended those changes be made. Accordingly, I find that the recommendations of the Director of DOP in this regard comply with BCZR, §235.B.4.B.2. Similarly, I do not read the Action Item for the Towson Urban Core regarding a build-to line (MP 2020, p. 82) as requiring a specific measurement between the building and the

street particularly in light of the express language in BCZR, §259.16.A of no area setbacks, and the clear language in the T-6 Urban Core of shallow or no setbacks.

Moreover, based on the evidence presented, I am not persuaded that there is a deficiency with the public sewer system. The Basic Services Map indicates no deficiency. (Dev. Ex. 14). The Baltimore County Quarterly Report confirms that the 10 manholes remaining to be marked as ‘repaired’ are awaiting legal right-of-way agreements. (Dev. Ex. 15). To find otherwise would be based on speculation and not evidence.

As to Local Open Space requirement, the evidence was undisputed that there is no on-site or off-site available land. Additionally, the fee in lieu under the County’s approved Tier Schedule for this project type is \$0.00. The Redlined Development Plan exceeds the DTD Open Space requirement. (Dev. Ex. 1). Accordingly, I find both of these requirements have been satisfied.

While I find the concerns of GTA and TCA are genuine and relevant, the Developer met the burden of proof under the holding in *Elm Street, supra*. I find that the County witnesses provided responses to all questions asked and the testimony of each agency was consistent with the County exhibits. After considering the testimony and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from the various County agencies that the Plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and the Redlined Development Plan complies with the development regulations and applicable policies, rules and regulations. As a result, BCC, §32-4-229 mandates approval of the Redlined Development Plan. Additionally, I find that the concerns of Ms. Gurchik and the residents of the Penthouse are informed and practical and will be addressed as conditions in this Order and are necessary for the protection of the residents of Penthouse condominiums.

Pursuant to the advertisement, posting of the property, and the public hearing held thereon, the requirements of which are contained in Article 32, Title 4, of the BCC, the “STUDIOUS aka 100 W. Joppa Rd.” shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 22nd day of **February, 2021**, that the “**STUDIOUS aka 100 W. Joppa Road**” 7-sheet Redlined Development Plan marked and accepted into evidence as Developer’s Exhibit 1, be and hereby is **APPROVED**.

The relief above is granted herein shall be subject to the following:

1. There will be no parking at any time for any vehicles of 100 W. Joppa Road (fka 706 Washington Avenue) in the Penthouse parking garage located at 28 Allegheny Avenue.
2. All open and/or outdoor areas on the Property and the rooftop terrace on Level 16 including the sky lounge, shall be closed at 10:00 pm each night.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlw/dlm