

IN RE: PLANNED UNIT DEVELOPMENT	*	BEFORE THE OFFICE OF
(9655 Belair Road)		
E of the intersection of Belair Road	*	ADMINISTRATIVE HEARINGS
and Chapel Road		
11 th Election District	*	FOR
5 th Councilmanic District		
	*	BALTIMORE COUNTY
Brightview at Perry Hall and		
(Perry Hall Station	*	
1st Material Amendment to 3rd		
Refined DRC#051920D)	*	CASE NO. 11-1114
Crossroads Reserve, LLC	*	
<i>Owner/Applicant</i>		

* * * * *

**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 Section 32-4-245 of the Baltimore County Code (“BCC”). Crossroads Reserve, LLC Owner/Applicant (herein known as “Developer”) submitted for approval a material amendment to an PUD Development Plan known as “Brightview at Perry Hall” (PAI #11-1114, Resolution 115-11) (the "Brightview PUD") as prepared and sealed by Morris Ritchie & Associates, Inc.

The Developer proposes to add an adjacent 3.534 acres (Lot 2 - 9657A Belair Rd.; Lot 2A - 9655 Belair Rd.; Lot 2B – 9655A; Lot 3A – 9657 Belair Rd.; 9563A Belair Rd.) (the “Property”), into the boundaries of the Brightview PUD so as to construct 29 senior, independent-living townhomes, with the sale of all units being restricted to adults aged 55+, to be known as ‘Perry Hall Station’ (the “Amended PUD Project”). Details of the Amended PUD Project and development are more fully depicted on the redlined 7-sheet Development Plan. (Dev. Ex. 9) (the “Redlined Development Plan”).

The Brightview PUD, as originally approved by OAH in an Opinion and Order dated July 18, 2012, was a 225 residential unit PUD over 14.89 +/- acres to be constructed in two-phases: 165 residential dwelling units containing independent living, assisted living and Alzheimer's care units (Phase I) and an additional 60 dwelling units (Phase II). However, only 147 residential units were constructed in Phase I and 60 units were constructed in Phase II; leaving the Brightview PUD 18 units below the density permitted by Resolution 115-11.

On May 19, 2020, a Development Plan Conference ("DPC") was held via Webex with various Baltimore County agencies who advised that the Amended PUD Project constituted a 'material amendment' under BCC, §32-4-245(e)(1) because it proposed changes to the Brightview PUD approved location and density. (Dev. Exs.: 1, 2 and 3). At the DPC, the Baltimore County agencies responsible for review of the Redlined Development Plan submitted written comments regarding compliance with the Baltimore County regulations governing land development. The Director of Permits, Approvals and Inspections ("PAI") determined that the Amended PUD Project was a 'material amendment' and submitted the decision to the County Council pursuant to BCC, §32-4-245(e)(2). Because the County Council did not disapprove of the Director of PAI's decision, the Amended PUD Project was to be processed in accordance with BCC, §32-4-245(e)(5).

On December 1, 2020, the Property was posted with the Notice of Hearing Officer's Hearing ("HOH") 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 December 31, 2020 at 10:00 a.m. Joseph Moran, representative of the Developer attended the HOH in support of the Plan. Also in attendance were Dean Hoover and Nicole Reedy of Morris Ritchie & Associates. Jennifer Busse, Esquire and Whiteford, Taylor and Preston represented the Developer.

AGENCY WITNESSES

Numerous representatives of the various Baltimore County agencies who reviewed the Redlined Development Plan attended the hearing, including the following individuals from PAI: Darryl Putty, Project Manager, Michael Viscarra representing Development Plans Review (“DPR”) and Department of Public Works (“DPW”); James Hermann representing DPR and Rec and Parks (“R&P”); Aaron Tsui Office of the Zoning Review (“OZR”); Brady Locher from Department of Environmental Protection and Sustainability (“DEPS”); Brad Knatz of Real Estate Compliance (“REC”); and Jenifer Nugent from Department of Planning (“DOP”).

Each County agency representative indicated the Redlined Development Plan addressed all comments submitted by their agency and each recommended approval. Specifically, Mr. Hermann testified that a Schematic Landscape Plan was approved on December 10, 2020. (County Exhibit No. 1). An open space fee-in-lieu in the amount of \$70,000.00 was also approved. Aaron Tsui from the Office of OZR confirmed that there was no requirement for a new County Council Resolution for the Amended PUD Project and that the Redlined Development Plan met all zoning requirements, subject to approval of the requested Modifications of Standards, as set forth in the Redlined Development Plan (Dev. Ex. 9, Sheet DP-6). Brady Locher of DEPS testified on behalf of three (3) departments namely: Storm Water Management, Environmental Impact Review and Ground Water Management. He testified that: (1) a Storm Water Management Plan was approved on December 10, 2020 (County Ex. 2); (2) a Forest Buffer Variance was approved on December 7, 2020 (County Ex. 3) (Dev. Ex. 12); and (3) an Alternatives Analysis was approved on December 9, 2020. (County Ex. 4). Additionally, Brad Knatz of REC had no comments and recommended approval of the Redlined Development Plan.

Jenifer Nugent testified that the DOP had submitted two (2) reports entitled: (1) DPC and Final Report for HOH dated October 21, 2020; and (2) a HOH Updated Final Report dated December 23, 2020. Ms. Nugent confirmed that because Perry Hall Station is a restricted 55+ adult community, the requirements of BCC, §32-6-103 Adequate Public Facilities Ordinance regarding a school impact analysis is waived. DOP carefully reviewed the Pattern Book (Dev. Ex. No. 10) and adopts, as DOP’S recommendations under BCC, §32-4-402(c), the BCC, §32-4-402(d) Compatibility Objectives as detailed in the Pattern Book. (Dev. Ex. 10, p. 23).¹ Moreover, DOP agreed that through the Pattern Book and the Redlined Development Plan, the Amended PUD Project meets the requirements of the Residential Performance Standards (the “Standards”) under Baltimore County Zoning Regulations (“BCZR”) §260. (Dev. Ex. 10, p. 21).

DOP further recommended that the Modifications of Standards proposed by the Developer, as specifically set forth in the Pattern Book (p. 24) and the Redlined Development Plan (DP-Sheet 6), are necessary to protect the existing environmental features on the Property including the Forest Buffer and Forest Conservation areas. DOP further found that the Modifications are in compliance with BCZR, §430. [BCC, §32-4-425(c)(4)]. It was the opinion of DOP that the Amended PUD Project was in conformance with the goals, objectives and recommendations of Master Plan 2020 in that it bridges both the T-3 and T-5 transect zone and is in a Community Enhancement Area (MP 2020, p. 30) which are characterized by higher density, compact, walk-able, transit-oriented housing such as the townhomes proposed here. (Dev. Ex. 10, pp. 3, 4). [BCC, §32-4-425(c)(5)]. Additionally, the Amended PUD Project meets the MP 2020 need for diverse housing choices for senior citizens. (MP 2020, p. 37).

¹ BCC, §32-4-402.1 PUD – Compatibility does not apply in this case. While the PUD is identified within a transect Overlay of T-5 in the Master Plan (Map 5), located in an area identified in the Master Plan as a Community Enhancement Area (Map 6), US Rt. 1 (Belair Rd) is not an interstate highway. BCC, §32-4-402.1(a)(5).

Finally, DOP was not opposed to the proposed waiver of open space because the Amended PUD Project was providing on-site, outdoor amenities to the residents of Perry Hall Station and additionally, the residents will have use of a walking trail on the Brightview property as depicted on the Redlined Development Plan. (Dev. Ex. 9). Moreover, DOP highlighted that a Community Benefit of a \$70,000.00 contribution is being offered for open space/amenity improvements within Perry Hall community.

DEVELOPER'S CASE

Dean Hoover of Morris Ritchie & Associates was accepted as an expert in land planning and land development on behalf of the Developer. (Dev. Ex. 5). Mr. Hoover testified that the Redlined Development Plan was prepared under his direction. (Dev. Ex. 9). He explained that the initial Plan was redlined to incorporate changes requested by Perry Hall Improvement Association ("PHIA") including a sidewalk traversing the eastern/southern property line in order to connect the Amended PUD Project to the existing commercial uses to the south. (Dev. Ex. 8; Dev. Ex. 10, p. 12). PHIA supports approval of Redlined Development Plan. (Dev. Ex. 12). Mr. Hoover opined that by changing the use from commercial to residential, the Amended PUD Project is a less intense use. (Dev. Ex. 6). It will also have less than the permitted density for a DR 16 zone as allowed under BCZR, §430.3.C.2.

The proposed townhomes will be part of a condominium regime. Germantown Way (a private road) and all the common areas will be maintained by a homeowner's association while each of the 29 townhomes will be owned individually. Each townhome is 2-stories and will have a two-car garage. Each townhome measures 28 ft. wide by 54 ft. long with first floor living and 2- 3 bedrooms on upper floors.

In Mr. Hoover's professional opinion, the proposed Modifications of Standards will not have a detrimental or negative impact on surrounding land uses and will serve the public interest in that they exceed the general design, use and layout standards set forth in the BCC. The townhomes will reflect a natural extension of the Brightview PUD in terms of scale, scope and function. Given the successful development of Brightview PUD, and the logical connection between the Brightview assisted living facility and independent senior housing here, Mr. Hoover stated that there is a reasonable expectation that the Amended PUD Project will be developed to the full extent of the Redlined Development Plan. [BCC, §32-4-425(c)(3)].

Further, Mr. Hoover stated that the Amended PUD Project meets the special exception standards set forth in BCZR, §502.1 A, B, C, D, E, and F. [BCC, §32-4-245(c)(2)]. Specifically, the Amended PUD Project will not be detrimental to the health, safety or general welfare of the locality involved. It will not create congestion in the roads as addressed by the traffic study conducted by Traffic Concepts, Inc. dated November 5, 2020. (Dev. Ex. 11). Mr. Hoover explained that because the Amended PUD Project does not generate more than 50 trips during peak hours, a traffic study was not required under the BCC. Yet, the traffic study here confirmed that access to the Property from the US Rt. 1 intersection will operate at an adequate level of service. (Dev. Ex. 11).

Mr. Hoover opined that the Amended PUD Project will not create a potential for fire, danger or panic because the use is not inherently dangerous. The addition of 29 townhomes will not overcrowd the land but will have good design and layout and will provide needed senior housing in the area. Mr. Hoover added that there will be no impact on schools given that no children will live in the townhomes. There will be no interference with parks, water, sewer or other public conveniences or improvements as the Property is located within the URDL and has a

stormwater management facility. Finally, because the townhomes are 2-stories and will be constructed on graded, flat land, there will not be interference with light or air. There are no steep slopes on the Property.

Nicole Reedy, senior landscape architect with Morris and Ritchie was accepted as an expert in landscape architecture, zoning, land planning and development. (Dev. Ex. 4). Ms. Reedy added specific information in regard to the Modifications of Standards. (Dev. Ex. 9, Sheet 6; Dev. Ex. 10, p. 24). She testified that the requested Modifications are from: (1) the General Bulk Density Standards (BCZR, §1B01.2); (2) the development standards of the Honeygo Overlay Districts (BCZR, §259.9); (3) Residential Performance Standards (BCZR, §430); (4) Forest Buffer Regulations (BCC, §33-3-111) for Lot 11; and (5) Comprehensive Manual of Development Policies (“CMDP”). In her opinion, approval of the requested Modifications will achieve the best possible development design which are necessary to develop this Property with senior housing. By way of example, Ms. Reedy explained that on each of the ‘highly visible’ units, additional and enhanced architectural features will be added. (Dev. Ex. 10, p. 15). Simultaneously, the Developer is requesting relief to reduce the size of the backyards which is necessary to build the townhomes around existing Germantown Way.

Ms. Reedy also testified that a Modification to the Landscape Manual will be requested when the Final Landscape Plan is submitted to the County. This modification is for relief from the landscape strip at the base of the retaining walls. (County Ex. 1). Amenities and open space on the Property will include a firepit and shelter with ornamental fencing, and will be located next to the Forest Conservation Area. (Dev. Ex. 8). The senior residents will also have access to the Brightview PUD walking trail.

COMMUNITY WITNESS

David Hurwitz, a representative of Madison, LLC, who is the owner of a neighboring property at 9649 Belair Rd., was also present at the hearing. That property is occupied by the White Marsh Medical Center (“WMMC”) and is located directly behind proposed Units 19-29. Mr. Hurwitz voiced his concern that lighting from the WMMC parking lot may adversely affect the residents of those units. He was also concerned about that the distance is only 9 ft. between the WMMC property line and the rear yards of Units 19-29. In response, Joe Moran, the Developer’s representative, highlighted that a privacy fence will be installed across those yards to lessen that impact. Given the reduced size of the rear yards and lack of space for plantings on the Property, Mr. Moran and Mr. Hurwitz were agreeable to crafting a plan to plant trees/vegetation on WMMC’s property to screen the rear yards from the parking lot.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Hearing Officer may 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 Section 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 Section 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, without repeating all the evidence reiterated above, I find that the Developer presented uncontroverted evidence establishing each of the above elements and specifically that the Amended PUD Project meets the intents, purpose, conditions, and standards of B.C.C. §32-4-245. [BCC, §32-4-245(c)(1)]. I find clear evidence exists that the Amended PUD Project satisfies the BCZR, §502 A-F (special exception requirements) as reiterated by Mr. Hoover, and will constitute a good design, use and layout as made clear by Ms. Reedy. [BCC, §32-4-245(c)(2)]. I also agree that, given the successful development of the Brightview PUD, and the logical connection between the Brightview assisted living facility and the proposed independent senior housing here, the Amended PUD Project will be completed to the full extent of the Redlined Development Plan. [BCC, §32-4-245(c)(3)]. The evidence proved unequivocally that the Amended PUD Project complies with BCZR, §430 (governing PUDs) and specifically, the requirement of BCZR, §430.3.B.1 regarding the Compatibility objectives of the BCC, §32-4-402(d). [BCC, §32-4-245(c)(4)]. (Dev. Ex. 10, p. 23).

Because BCZR, §430.3 entitled ‘General Development PUD’ directs that residential uses are subject to BCC, §32-4-402 Compatibility requirements, Ms. Nugent of DOP confirmed that not only did the Pattern Book accurately outline those Compatibility objectives, but the DOP adopted those objectives as its own recommendations as required by BCC, §32-4-402(c). [BCC, §32-4-245(c)(4)]. Finally, I am persuaded that the Redlined Development Plan is in conformance with the Master Plan, within the T-3 and T-5 Transect zones and also supports the improvement of a Commercial Enhancement Area, while also meeting a MP 2020 goal of senior housing. [BCC, §32-4-245(c)(5)].

I further find that the Pattern Book delineates how the Redlined Development Plan meets the Residential Performance Standards as set forth in BCZR, §260. (Dev. Ex. 10, p. 21). The

requested Modifications of Standards are listed in detail in the Pattern Book (Dev. Ex. 10, p. 24) and on the Redlined Development Plan (Dev. Ex. 9, Sheet-6). I have carefully considered the impact of those proposed Modifications of Standards upon the surrounding residential and commercial uses and find that they will not have a detrimental or negative impact on those existing uses. Moreover, I find that the proposed Modifications are in the public interest because they are clearly necessary to assist with smart growth initiatives, promote redevelopment, provide a mixture of housing types, and meet the desire for sustainable development on vacant land. It is in the best interest of the public and the surrounding uses to have this transitional use between the existing commercial uses and the single-family homes in the neighborhood. (Dev. Ex. 10, pp 16-17, 19-20).

I further find that the Modifications are necessary to achieve the intent and purpose of BCC, §32-4-245 and BCZR, §260 which is collectively to achieve a development of substantially higher quality than a conventional development could achieve. Under BCZR, §260.1, I find that the Modifications are also clearly necessary in order that the Amended PUD Project will comply with other standards such as: General Development PUD regulations of BCZR, §430.3 including the Compatibility objectives; the requirements of BCC, §32-4-245(c)(2) (good design, use and layout); the Master Plan's goal for diverse, independent, senior housing in this area; as well as protecting environmental resources of the Forest Conservation area.

In addition, I find that the proposed outdoor amenity space on the Property of a shelter and fireplace for the senior residents to use, along with access to the walking trail on the Brightview PUD property, integrate open space and links the Brightview PUD walking trail into the Amended PUD Project. (BCZR, §260.3). I also accept the proposed community benefit of a \$70,000.00 financial contribution to be used toward open space and/or amenity improvements

within Perry Hall (with the allocation/use of funds to be finally decided after continued coordination with Councilman Marks' office to be paid before record plat recordation). This fee-in-lieu of open space is in the general welfare of the community and is reasonable, necessary and consistent with the intent and purpose of the PUD regulations. (BCC, Title 32, Part IV).

In light of this testimony, and given the support of the Perry Hall Improvement Association (Dev. Ex. 13), pursuant to the zoning and development regulations of Baltimore County, the 1st Material Amendment to the 3rd Refined Development Plan as set forth on the 7-Sheet Redlined Development Plan (Dev. Ex. 9) for the Amended PUD Project shall be approved consistent with the comments contained therein.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 7th day of **January, 2021**, the 1st Material Amendment to the 3rd Refined Development Plan as set forth on the 7-Sheet Redlined Development Plan (Dev. Ex. 9) for the Amended PUD Project is hereby **APPROVED** consistent with the comments contained therein; and it is,

FURTHER ORDERED that representatives of both the Developer and Madison, LLC will work together to develop a plan for vegetative screening to be planted on the property of Madison, LLC (9649 Belair Rd.) at the expense of the Developer, to shield, to the extent possible, lighting from the parking lot of Madison, LLC reflecting onto the rear of Units 19-29 of the Amended PUD Project.

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

Signed _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm