

IN RE: <b>DEVELOPMENT PLAN HEARING &amp; PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE OF
1 <sup>st</sup> Election District	*	ADMINISTRATIVE HEARINGS
1 <sup>st</sup> Council District	*	FOR
<b>(7726 JOHNNYCAKE ROAD)</b>	*	
<b>PATAPSCO GLEN II</b>	*	BALTIMORE COUNTY
<b>SECURITY BLVD. VENTURES LLC,</b>	*	<b>CASE NOS. 01-0613 &amp;</b>
<b>c/o CAVES VALLEY PARTNERS</b>	*	<b>2021-0076-A</b>

*Owner/Applicant*

\* \* \* \* \*

**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”). Security Boulevard Ventures LLC, c/o Caves Valley Partners, Owner/Applicant (herein known as “Developer”) submitted for approval a 2-sheet Red/Greenlined Development Plan (the “Red/Greenlined Development Plan”) prepared by DS Thaler & Assoc., LLC, known as “Patapsco Glen II” for the property located at 7726 Johnnycake Rd. (the “Property”).

The Developer proposes to construct 253 single-family attached townhouses in which 192 will be with two-car garages, and 61 will be with one-car garages, on approximately 58.92 acres. The Property is currently vacant and mostly cleared with wooded and environmental areas in the northern end of the Property. Details of the proposed development are more fully depicted on the Red/Greenlined Development Plan (Dev. Ex. 21A, 21B).

The Developer also filed a Petition for Variances from the Baltimore County Zoning Regulations (“BCZR”) for the following:

- (1) §1B01.2.C.1.C and the Comprehensive Manual of Development Policies (“CMDP”) to allow a minimum front building face to property line

and/or to public street right-of-way setback of 13 ft./13 ft. in lieu of the required 25 ft./25 ft. (garage townhouse);

(2) §1B01.2.C.1.C and the CMAP to allow a minimum rear building face to property line and/or to public street right-of-way setback of 20 ft./ 20 ft. in lieu of the required 30 ft./50 ft.;

(3) §1B01.2.C.1.C and the CMAP to allow a minimum side building face to side and/or to public street right-of-way setback of 20 ft. /12 ft. in lieu of the required 25 ft./25 ft.;

(4) §1B01.2.C.1.C and the CMAP to allow a minimum building face to tract boundary setback of 29 ft. in lieu of the required 30 ft.;

(5) § 504.2 and the CMAP (Modifications of Standard) to allow seven (7) townhouse units in a group in lieu of the maximum permitted six (6) townhouse units in a group;

(6) §1B01.B.1 and the CMAP to allow a reduction in the required Residential Transition Area (“RTA”) to allow units to be constructed as close as 33 ft. from the tract boundary, related grading, clearing, and infrastructure installation within the buffer, and to exceed the maximum height of 35 ft. within 100 ft. of the tract boundary, related grading, clearing, and infrastructure installation within the buffer, and to exceed the maximum height of 35 ft. within 100 ft. of the tract boundary;

(7) §504.2 and the CMAP to allow private rear yard areas of less than 500 sq. ft.; and

(8) §301.1.A to allow a deck (open porch) to extend into the minimum required rear yard more than the allowed 25% (requesting to have a minimum 12 ft. deep deck in rear yard).

A Community Input Meeting (“CIM”) was held on September 3, 2020. A list of participants is contained in the case file. A Development Plan Conference (“DPC”) was held pursuant to BCC, §32-4-226(c) on April 7, 2021 and was attended via Webex by representatives of the County agencies listed herein.

The Property was posted with the Notice of Hearing Officer’s Hearing (“HOH”) and Zoning Notice, both on April 9, 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 conducted on April 29, 2021.

Arthur Adler of Caves Valley Partners attended the HOH in support of the project, along with Stacy McArthur of DS Thaler & Assoc., Inc. who prepared and sealed the Red/Greenlined Development Plan. Christopher Mudd, Esquire, Adam Rosenblatt, Esquire and Venable, LLP represented the Developer. Cathy Wolfson, 8434 Dogwood Rd. testified on her own behalf. Kathleen Skulley testified on behalf of Greater Patapsco Community Association (“GPCA”) and provided a written statement which is contained in the file.

#### AGENCY WITNESSES

Numerous representatives of the various Baltimore County agencies who reviewed the Red/Greenlined Development Plan also attended the HOH, including the following individuals from the Department of Permits, Approvals and Inspections (“PAI”): Darryl Putty, the Project Manager; Jim Hermann, landscape architect for Baltimore County who testified on behalf of Development Plans Review (“DPR”) and Department of Recreation and Parks (“R&P”); LaChelle Imwiko from Real Estate Compliance (“REC”); Michael Viscarra from DPR; and Gary Hucik, Office of Zoning Review (“OZR”). Also appearing on behalf of the County was Steve Ford from the Department of Environmental Protection and Sustainability (“DEPS”), and Jenifer Nugent from the Department of Planning (“DOP”).

Each County agency representative indicated the Red/Greenlined Development Plan addressed all comments submitted by their agency, and they each recommended approval. (Dev. Ex. 21A, 21B). The first County witness to testify was Michael Viscarra from DPR which agency reviews for roads, sewers, storm drains, traffic and floodplains. Mr. Viscarra testified that all traffic issues were resolved by Greg Carski of Traffic Engineering after reviewing the Developer’s traffic impact study. Mr. Viscarra provided DPC Comments dated April 5, 2021 wherein it was noted that frontage improvements on Johnnycake Rd. would be consistent with Patapsco Glen project. (County Ex, 1).

Mr. Viscarra explained that the Cedar Branch Relief Sewer is under construction and when complete, will have adequate capacity to accommodate the projected flows from this project. DPR requested that the Developer provide a minimum 25 ft. wide utility easement on the northern part of the Property that will allow for extension of gravity sewer from the adjacent Patapsco Fields PUD (not yet approved) to the County-owned Johnnycake Pumping Station. Additionally, DPR required the Developer to provide a minimum 10 ft. drainage and utility easement along all bordering property lines which are not adjacent to road right-of-way or storm drain reservations or where private easements or environmental easements abut the property line. DPR also required a 100-year flood plain study among a list of other items for the Developer to complete. In response to questions about the Security Blvd. road extension, Mr. Viscarra deferred to Developer's counsel. In summary, DPR recommended approval of the Red/Greenlined Plan.

The second County witness was Jim Hermann, who testified on behalf of DPR and R&P. Mr. Hermann testified that a 2-sheet Schematic Landscape Plan was approved on April 24, 2021. (County Ex. 2). He added that the Developer will submit a Final Landscape Plan during Phase II. On behalf of R&P, Mr. Hermann testified that the Local Open Space ("LOS") required under BCC, §32-6-108(c) is 1,000 sq. ft. per residential dwelling unit. For this townhouse community, the LOS is 253,000 sf or 5.82 acres (253 units x 1,000 sf) as indicated in the DPC Comments which contain Mr. Hermann's hand written changes. (County Ex. 3). Mr. Hermann added that screening and fencing will be provided along the property lines to deter encroachment and to define the open space limits. (*Id.*). The Developer will meet the LOS requirements in the northern end of the Property with a trail through the BGE gas line, as well as in additional areas, as shown on the Red/Greenlined Development Plan. (Dev. Ex. 21A, 21B). As required by the County, the Developer will coordinate the open space areas with the Patapsco Glen project to the west and Patapsco Fields PUD to be approved to the east.

As also set forth in the DPC Comment dated April 7, 2021, Mr. Hermann explained that Dogwood Run is a Master Plan designated Recreational Greenway and that the area of Greenway dedication shall be limited to the 100-year floodplain or wetland or forest buffer, whichever is greater. Mr. Hermann requested that a note be added to the Red/Greenlined Development Plan regarding the permitted uses within the Baltimore County Recreational Greenway Reservation/Easement and the specific language is provided in the R&P DPC Comment. (*Id.*). Mr. Hermann highlighted amenities such as a trail, gazebo, and benches which have an estimated cost of \$71,430.00. On behalf of both agencies, Mr. Hermann recommended approval of the Red/Greenlined Development Plan.

Gary Hucik of OZR confirmed that OZR reviewed the Red/Greenlined Development Plan and that OZR had no objection to its approval. Mr. Hucik pointed out that the Developer is proposing 253 units but the DR 5.5 zoning permits density of 376 townhomes. (County Ex. 4). The next County witness was LaChelle Imwiko who testified on behalf of the REC. After reviewing the Redlined Development Plan, she met with Stacy McArthur on April 23, 2021. Ms. Imwiko provided 6 specific comments as outlined in the REC DPC Comment dated April 7, 2021 primarily addressing clarification and changes to the Dedication Table. (County Ex. 5). Ms. Imwiko confirmed that all of her comments were addressed and as a result, REC recommended approval.

The next County witness was Steve Ford from DEPS who testified on behalf of three (3) departments: Storm Water Management (“SWM”), Environmental Impact Review (“EIR”) and Groundwater Management (“GWM”). With regard to GWM, Mr. Ford relayed that there are no wells or septic systems onsite and the proposed development will utilize public water and sewer facilities. As a result, GWM had no additional comments and recommended approval. (County Ex. 6). EIR confirmed that all of their DPC comments from April 7, 2021 were addressed in the Red/Greenlined Development Plan. (*Id.*). Accordingly, EIR had no additional comments and recommended approval.

Mr. Ford also confirmed that on behalf of SWM, the Concept SWM Plan was approved by Andrew Fish on February 22, 2021. (*Id.*). Mr. Ford also testified that a sewer line will run through the Forest Conservation area on the northern end of the Property to accommodate the proposed Patapsco Fields PUD is shown on the Red/Greenlined Development Plan. Mr. Ford also verified that DEPS had approved a Special Variance to remove 2 of the 7 Specimen Trees. (County Ex. 7). One of Specimen Trees was dead.

Testifying for DOP were Krystal Patchak and Jenifer Nugent who submitted a Final HOH Report dated April 29, 2021 recommending approval of the Redlined Development Plan. (County Ex. 8). Because the proposal here is for residential development, it is subject to the Adequate Public Facilities Ordinance, School Impact Analysis under BCC, §32-6-105 (“SIA”). (County Ex. 10). She reviewed the SIA which was filed on March 5, 2021 and explained that none of the schools referenced in the SIA has a projected full time equivalent enrollment (“FTE”) equal to or over 115% of the State Rated Capacity (“SRC”). The projected number of pupils as a percentage of the net SRC is 103.43% for Dogwood Elementary School; 100.56% for Windsor Mill Middle School, and 79.70% for Woodlawn High School.

Ms. Patchak testified that the DOP has no objections to the relief requested for the front, rear and side building face to property lines and/or rights of way as well as the minimum building face to tract boundary setback being granted because those requests are not blanket variance requests and effect a small number of units through the Property. The DOP was also in support of the requested Modification of Standards for seven (7) townhouse units in a group (for a total of 3 lines) in lieu of the maximum permitted six (6) townhouse groups. However, due to the intensity of the development now concentrated in the southern portion of the Property, DOP was not in support of the blanket variances for reduced rear yard areas with decks encroaching into those reduced rear yards.

In the Concept Plan Comments dated July 27, 2020, the DOP summarized the zoning history of the Property. (County Ex. 9). In 2000, the Property was the subject of Comprehensive Zoning Map Process (“CZMP”) Issue 1-051 and 1-058. On Issue 1-051, the Petitioner, D.S. Thaler & Associates, Inc., requested a portion of the Property to be rezoned from RC 3 to DR 3.5. The Property was also the subject of Issue 1-058 in which the County Council rezoned a portion of the Property to RC 6. In 2008, this Property was the subject of CZMP Issue 1-031, in which the Petitioner, Ribera Development, LLC, requested to rezone certain property including the subject site to OR 2 and OT. The County Council rezoned the majority of the tract, including the subject site to BM-TM and other parts of the issue to DR 10.5. The Property was more recently the subject of CZMP Issue 1-017 (CZMP 2020) in which the GPCA filed to down zone the property to DR 3.5 and RC 6. However, the County Council voted to retain the existing BM-IM zoning.

In both the Concept Plan Comments and the Development Plan Comments (County Ex. 9), the DOP raised a potential Master Plan conflict in regard to the future road extension of Security Boulevard as identified in Capital Improvement Project (CIP) Nos. 72 and 73. It was DOP’s understanding that DPW approved the Security Blvd. extension to extend over and across the Property. (*Id.*). At the HOH hearing, Ms. Nugent indicated that DOP deferred the issue to DPW. In cross examination, the Developer submitted Master Plan 2020 (pp 58-59) (Dev. Ex. 18) and County Council Resolution No. 59-20 in regard to the Patapsco Fields PUD (Dev. Ex. 19) to support its position that the future Security Blvd. extension will not go through the Property.

Finally, in regard to Residential Performance Standards (BCZR, §260), the DOP reviewed and approved the redlined Pattern Book subject to additional revisions as set forth in the HOH Report which DOP requested to be complete prior to final signature on the approved Development Plan. Ms. Nugent added that these final revisions were intended to have the Pattern Book for Patapsco Glen mirror the one

for this Property. DOP agreed with the requested deviation (variance) from the Residential Performance Standards in the CMDP to permit 7 townhouse units in a group in lieu of the maximum permitted 6 townhomes in a group.

**Developer's Case:**

1. Stacy McArthur. The Developer's first witness was Stacey McArthur, P.E., the landscape architect who prepared and sealed the Red/Greenlined Development Plan was accepted as an expert in land architecture, in the BCC in regard to development, and in the BCZR. (Dev. Ex. 2). She also prepared the redlined Pattern Book which provides details of the single-family attached townhouses with architectural information and floor plans. (Dev. Ex. 5A, 5B, 5C). A rendering of the development provided useful information showing the proposed finished product. (Dev. Ex. 4). An aerial photograph of existing conditions of the Property also shows the Patapsco Glen project to the west, and the future Patapsco Fields PUD to the east. (Dev. Ex. 6). Patapsco Glen is currently under construction as shown in photographs. (Dev. Ex. 17).

Ms. McArthur described the Property as oddly shaped with a BGE gas line bisecting the middle of the Property. To the north of the BGE gas line, and in the western part of the Property are environmental features including unnamed tributaries, wetlands, trees, and flood plains. Several specimen trees are located in the northern environmental area. The northern and western ends of the Property will remain Forest Buffer and Forest Conservation Easement areas which will include open space areas measuring 5.8 acres. (Dev. Exs. 4, 21A, 21B). That area will be a park with a Recreational Greenway system including a 5 ft. wide walk/biking trail along the BGE gas line connected to Patapsco Glen, this development, and to the proposed Patapsco Fields PUD. The Recreational Greenway can be used by residents of each of these developments. As such, there will be no development north of the BGE gas line and the open space area will be owned by the Homeowner's Association.



Ms. McArthur reiterated that there are 7 total specimen trees, 2 of which are proposed to be removed as 1 is in fair condition and 1 is dead. Both of those trees are located in the middle part of the proposed development, necessitating a Special Variance Application pursuant to the Forest Conservation regulations for permission to remove those trees. (Dev. Ex. 11, 12). On April 5, 2021, DEPS granted approval to remove those 2 trees after finding that the Developer met the requirements of BCC, §33-6-116(d) and (e). (Dev. Ex. 13). Significantly, Ms. McArthur testified that 1 of the other specimen trees which will remain is a 53 ft White Oak which is located in the front of the Property along Johnnycake Rd. (Dev. Exs. 4, 7). It will remain in this prominent place surrounded by green space with a seating/recreational area.

In response to agency comments, Ms. McArthur redlined the Development Plan. (Dev. Ex. 1A, 1B). She explained that the Developer initially proposed to build 288 townhomes, some of which were located north of the BGE gas line. After considering comments from the community and the County, all of the development was moved south of the BGE line. This design reduced the number of townhomes to 253 (each is 20 ft. wide), 192 of which are 2 car garages (both frontloaded and rear loaded) and 61 of which will be 1 car garages. Sidewalks and a bike trail will connect Patapsco Glen with the Patapsco Glen II. The Fire Marshall is requiring 4 additional fire hydrants which have been added to the Red/Greenlined Development Plan.

One of the specific changes requested by the County was to provide a Homeowner's Association maintenance access easement on the eastern boundary for Patapsco Fields PUD. Upon doing so, 2 dwelling units were lost and replaced with a Gazebo and green area open space. (Dev. Ex. 21A, 21B). With regard to storm water management, these facilities will be provided in 3 areas: on the western side; at the Baltimore County pumping station; and in the middle of the Property. Currently, there are no stormwater management facilities on the Property.

Ms. McArthur opined that 50% of the Property will remain as open areas (5.8 HOA Open space; 7.0 HOA common areas, 16.5 acres of environmental Forest Buffer and Forest Conservation Easement. With regard to parking, each townhouse has a garage. Driveway parking is also available for residents. There are 19 guest parking spaces separated with grass strips. Additional landscaping will be installed in several places: along Johnnycake Rd.; along the sides and rear of units; around the stormwater management facilities; and in the northern environmental park area. (County Ex. 2).

Similar to Patapsco Glen, the builder for this development is Lenar, a nationwide builder. The Pattern Book detailed the architecture. (Dev. Exs. 5A-5C). The facades are varied by color and material used. On high visibility units, brick façade is present. Rear decks can be selected by owners and are proposed to be elevated above the ground so as not to interfere with the rear yard space.

Ms. McArthur also opined that a Compatibility Analysis pursuant to BCC, §32-4-402 was provided in the Pattern Book. (Dev. Ex. 8). She opined that the development met each of the 8 factors and specifically the arrangement and orientation of the proposed townhomes mirror the Patapsco Glen development; the garages for each townhouse will eliminate parking along public roads; the streets are connected by 2 access points to Johnnycake Rd.; sidewalks and a pedestrian trail connect this development to Patapsco Glen; the proposed open space runs throughout the northern end of the Property and will serve each of the communities; the White Oak specimen tree is a significant feature of the Property and is incorporated into the design; the proposed landscaping is extensive throughout the Property as depicted on the Site Frontage Plan along Johnnycake Rd. (Dev. Ex. 10); the proposed lighting is typical for site lighting on public streets; there is a masonry sign at the entrance to the development; and the scale and massing of the townhomes is appropriate in that townhouses are arranged in rows, the length of which varies from 4 townhouses in a row, to the maximum of 7 townhouses in a row (Variance No.5).

With regard to the requested Variances, Ms. McArthur explained that not all of the townhomes need variance relief and of the relief which is requested, all internal to the development (i.e. building face to building face or building to tract boundary). Therefore, the variances do not affect adjacent properties. By way of example, Variance No. 1 to allow a minimum front building face to property line is for 3 townhomes. (Dev. Ex. 9). Ms. McArthur testified that when the development area was moved below the BGE gas line to accommodate the Community concerns, the areas of development become more restricted. Additionally, the combination of the irregular Property shape and arched frontage along Johnnycake Rd. along with the BGE gas line bifurcating the Property in the middle, consolidated the actual development area and directed how the site could be arranged. Those factors plus the environmental area in the northern end, the County pumping station in the west, the open space area containing the White Oak Specimen Tree on Johnnycake Rd. further confine the developable area. She clarified that Variance No. 8 to extend the rear decks into the yards more than 25% was filed as a courtesy to future homeowners to prevent the filing of administrative variances

Ms. McArthur opined that the Petitioner would suffer a practical difficulty if the variance were not granted resulting in the need to develop the northern environmental area which would require removing specimen trees. She testified that the proposed layout is the best design that will preserve environmental areas and meets the concerns of interested parties. She added that there is no detrimental impact on the neighborhood as this development is set farther back from Johnnycake Rd. than Patapsco Glen and Patapsco Fields PUD and is buffered by landscaping.

2. Arthur Adler. The second witness to testify for the Developer, 1 Olympic Place, Towson, is the Managing Partner of Caves Valley Partners. He testified that the Developer purchased the Property 10 years ago. In 2015, there was concept plan for Granite View Apartments on one of the parcels for 280 apartments and 38 townhouses with garages, all of which were to be rental units. That plan did not

continue beyond the concept plan stage. Mr. Adler stated that he has connected with community members and has responded to citizen complaints. In response to concerns from GPCA, the development plans were revised. He mentioned that GPCA filed to downzone the Property during the 2020 CZMP to remove the BM zoning. In the interests of compromise, the Developer agreed to move the development area south of the BGE line, leaving the northern part in its natural state. Mr. Adler stated that there will be one Homeowner's Association for both Patapsco Glen and Patapsco Glen II.

#### COMMUNITY WITNESSES

Cathy Wolfson, 8434 Dogwood Rd. is also the Secretary of GPCA. At this hearing, Ms. Wolfson testified in her individual capacity and was permitted to ask questions of the Developer's witnesses. While Ms. Wolfson's home is 2.5 miles from the Property. Her concern was primarily traffic. She testified that there would be 5,000-9,000 vehicles per day driving on Johnnycake Rd. and Fairbrook Rd.

Kathleen Skullney, President of GPCA, 10813 Davis Rd., Granite, MD, testified that the Property was not unique. She stated that she attempted to obtain a copy of the Redlined Development Plan prior to the HOH but was not given one. Ms. Skullney was testifying on behalf of GPCA and that this Property was included within GPCA's boundaries. GPCA's written statement was submitted. (Prot. Ex. 1).

#### FACTUAL FINDINGS AND DECISION

The OAH, sitting as the Hearing Officer in review of development plans, has only those powers delegated by statute. BCC, §32-4-229 *mandates* that a Hearing Officer grant approval of a development plan which meets all of the development rules, regulations and applicable policies as follows:

Hearing Officer *shall grant approval* of a development plan that complies with these development regulations and applicable policies, rules and regulations.

The foregoing dictates that a Hearing Officer may not deny a development plan which meets all of the development rules, regulations and applicable policies.

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 will continue to review the Developer’s evolving plans and construction activities through every phase of the development process to ensure compliance with all County laws and regulations.

1. Potential Master Plan Conflict.

As set forth above, in their Concept Plan Comments and Development Plan Comments (County Ex. 9), DOP noted a potential Master Plan conflict regarding the extension of Security Boulevard as identified by Capital Improvement Project (CIP) numbers 72 and 73 as set forth in the Master Plan 2020 (pp. 58-59) (the “Security Blvd. Extension”). (Dev. Ex. 18). DOP pointed out that DPW has approved roadway plans reflecting this extension over and across the Property. (County Ex. 9). If a Master Plan conflict did exist, the issue is required to be referred to the Planning Board for a decision under BCC, §32-4-231. The Planning Board’s decision would then be binding and incorporated into this Order.

However, unlike the Master Plan conflict in *In Re 1301 Pulaski Hwy, LLC*, Case No.: CBA- 19-002, the evidence here confirmed that there is no Master Plan conflict for the Planning Board to resolve because the Security Blvd. Extension is only for roadwork on the east side of Fairbrook Rd. (Dev. Ex. 18). The Property is located entirely on the west side of Fairbrook Rd., separated by the proposed Patapsco Fields PUD property. Specifically, the Security Blvd. Extension is from the Medicare/Health

Care Financial Administration (HCFA) on Security Blvd. to Fairbrook Rd. (CIP No. 72), and then from Fairbrook Rd. back to Security Blvd. and North Rolling Rd. (CIP No. 73). (Dev. Ex. 18). The aerial photo depicts the location of these streets and confirms that no Master Plan conflict exists. (Dev. Ex. 6).

The Developer also provided the Patapsco Fields PUD County Council Resolution No. 59-20 dated June 1, 2020 as further support for the fact that the Security Blvd. Extension will not extend across or through the Property because it would have to first traverse over the Patapsco Fields PUD property, and under Resolution No. 59-20, that is prohibited. In that Resolution, the County Council affirmatively stated that there is no direct access or entrance to/from Patapsco Fields onto Security Blvd. and/or Fairbrook Rd., nor should the right-of-way for Security Blvd. and/or Fairbrook Rd. be extended through the Patapsco Fields property. Based on this evidence, there is no referral required to the Planning Board.

## 2. Variances.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Variations Nos. 1, 2, 3, 4 and 7 as requested by the Developer are all internal variances between the townhouses or between the townhouses and property line. Ms. McArthur provided uncorroborated expert testimony as to the uniqueness of the Property and specifically explained that the Property is an irregularly shaped parcel with an arching right-of-way along Johnnycake Rd. This peculiar shape can be seen in the aerial photo (Dev. Ex. 6) and the Rendering (Dev. Ex. 4). The uniqueness is exacerbated by the BGE gas line that bisects the Property, the environmental area in the north, the County's pumping station in the west, and the White Oak Specimen Tree in the south.

Ms. McArthur opined that because of the uniqueness, the Developer would suffer a practical difficulty if Variance Nos. 1, 2, 3, 4, and 7 were not granted because the development has been revised to fit within the area below the BGE gas line. In doing so, the number of townhouses has been reduced from 288 townhouses to 253. Conversely, if the Developer did not receive the Variance relief, development would be in the northern part which would cause community concerns and negatively impact the environment. I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the proposed setbacks were not granted. I also find that the requested variance relief is within the strict harmony with the spirit and intent of the BCZR and can be granted without injury to the health, safety or general welfare, particularly in light of the fact that there were no neighboring property owners or residents across Johnnycake Rd. who appeared at the hearing.

With regard to the Residential Transition Area (RTA) Variance, Counsel for the Developer withdrew this Variance and stated that it was no longer needed.

DOP opposed Variance No. 8 because it seeks a blanket variance for rear decks to extend into the rear yard more than the allowed 25%. This Variance is not requested for any particular townhouse but was filed for the benefit of future owners who may wish to have rear decks. (Dev. Ex. 9). I agree with DOP that this request for a blanket variance which will be denied as contrary to the CMDP - Residential Standards (p. 38).

3. Compatibility. Based on the DOP findings, Ms. McArthur's testimony, and the Pattern Book, I find that the Red/Greenlined Development Plan meets each of the design criteria set forth in BCC, §32-4-402. The arrangement and orientation of the townhouses, garages and street layouts, proposed open space and additional landscaping achieves the compatibility objectives in accordance with the CMDP guidelines. I find the sidewalk, road and HOA access connections to both Patapsco Glen and the proposed Patapsco Fields PUD joins the adjacent neighborhoods. The overall scale and proportion

of the townhouses along with the architectural detailing as set forth in the Pattern Book compliments the existing neighborhood across Johnnycake Rd. as well as the Patapsco Glen townhouses. Thus, the Compatibility factors have been met.

#### 4. Schools.

The Adequate Public Facilities Ordinance found in BCC, §32-6-103(e)(1)(2) states that development approval may not be granted in existing overcrowded school districts (defined as a district where enrollment exceeds 115% of the state-rated capacity (“SRC”), or if the development plan is projected to generate additional school population that would result in the school district becoming an overcrowded school district.

A School Impact Analysis (“SIA”) was submitted by the Developer and was reviewed and approved by DOP in accordance with BCC, §32-6-103(g). (County Ex. 10). The SIA confirmed that none of the schools referenced in the SIA has a projected full time equivalent enrollment equal to or over 115% of the SRC: (Dogwood ES: 103.43%; Windsor Mill MS: 100.56%; Woodlawn HS: 79.70%). As a result, the Developer has satisfied this requirement.

#### 5. Local Open Space.

The requirement for a development to provide Local Open Space (“LOS”) is found in BCC, §32-6-108(c) - a minimum of 1,000 sq. ft. of open space per residential dwelling unit. In this case, with 253 dwelling units proposed, 253,000 sf of LOS must be provided. The Developer will satisfy the on-site LOS here by providing 258,188 sf of LOS, primarily in the northern part of the Property but also throughout the development as set forth in the Open Space Exhibit of the Pattern Book. (County Ex. 3; Dev. Exs. 5A-5C, p.126). The evidence produced was that 50% of the Property will be open space. Accordingly, I find that this requirement has been satisfied.



6. Master Plan Greenways.

Mr. Hermann, the County landscape architect, testified that the Dogwood Run is a Master Plan designated Recreational Greenway. The Recreational Greenway here will be dedicated to the County by reservation/easement. He explained that activities such as hiking, bicycling, fishing, nature/environmental studies and trail improvements are permitted within the Greenway. As a result, Mr. Hermann requested that a note be added to the Redlined Development Plan (Dev. Exs. 1A, 1B) to list these activities. (County Ex. 3). Ms. McArthur added that note onto the Redlined Development Plan which then became the Red/Greenlined Development Plan. (Dev. Ex. 21A, 21B).

7. Modification of Standards.

I find the Developer's request for Modification of Standards (Variance No. 5) limited to 3 groups/lines of townhouses in the center of the development with 7 townhouse units in each group (in lieu of the maximum permitted of 6 townhouse units in a group) is clearly necessary under BCZR, 260.1.B.4 to comply with environmental regulations and protect natural resources in the northern part of the Property. The evidence was that the initial development plan showed townhouses above the BGE gas line in the environmental area, which was then revised to shift all of the development south of the BGE gas line, resulting in the loss in the number of units. Several additional units were eliminated on the eastern boundary line and replaced with HOA Open Space in order to comply with the County's comment to provide a 20 ft. access easement for maintenance to HOA open space. (Dev. Ex. 21A, 21B). I also find that the requested Modification of Standard is clearly necessary to achieve the best possible development design, considering the goals of the CMDP as reflected in the Pattern Book. (Dev. Ex. 5A-5C).

8. GPCA Concerns.

The written statement of the GPCA contains their position. (Prot. Ex. 1). GPCA is opposed to

the Variance relief, the negative impact on environment caused by water runoff, and the lack of stormwater management facilities. GPCA members are also concerned with increased traffic and the future Security Blvd. Extension. Additionally, GPCA states that the Red/Greenlined Development Plan fails to meet the Compatibility factors in BCC, §32-4-402 with regard to the RC6 natural environment and with the neighborhood on the south side of Johnnycake Rd. GPCA contends that this development will diminish the quality of life of area residents.

With regard to water runoff concerns, the evidence presented was that the Developer is installing 3 stormwater management facilities as set forth on the Red/Greenlined Development Plan. (Dev. Ex. 21A, 21B). Additionally, DEPS approved the Concept Stormwater Management Plans on February 22, 2021. (County Ex. 6). The absence of stormwater management facilities on this vacant Property is contributing to the current water run off problem. As shown on the Schematic Landscaping Plan, the Property will be improved with additional landscaping which will aid in the reduction of water runoff. (County Ex. 2). The colored rendering provides an accurate depiction of the proposed, detailed landscaping. (Dev. Ex. 4). Landscaping will be provided around each group of townhouses, along the frontage of Johnnycake Rd. and in the northern environmental areas.

As to the GPCA's concern about the Security Blvd. Extension, as previously established, the extension, if it is constructed, will not go through the Property or through the adjacent Patapsco Fields PUD property. The evidence which was presented through Mr. Viscarra was that the Chief Traffic Engineer for Baltimore County, Greg Carski, reviewed the Redlined Development Plan, reviewed the Developer's traffic impact study, and recommended approval. The Protestants did not present a traffic engineer.

The testimony by Ms. McArthur, and the information in the Pattern Book, support the finding that the proposed development meets each of the Compatibility factors in BCC, §32-4-402. The

Compatibility factors center on the design and layout and consistency with existing neighborhoods. I find that the development is consistent with RC6 natural environment in that 50% of the Property will remain undeveloped, the majority of which is in the northern portion as specifically requested by GPCA and/or concerned citizens. Indeed, the BM-IM zoning on the Property permits a more intense commercial use than the use which is proposed. While the GPCA wanted the Property zoned DR 3.5 and RC6, the County Council voted to retain the BM-IM zoning in the 2020 CZMP.

9. Forest Conservation Special Variances.

Developer filed a Special Variance Application to remove 2 specimen trees from the middle of the Property under BCC, §33-6-116(d) and (e). (Dev. Ex. 11). I agree with the finding of DEPS that Developer met 2 of the 3 required factors in BCC, §33-6-116(d), as well as all 3 factors under BCC, §33-6-116(e). One of the specimen trees to be removed is dead and the other is in fair condition. Importantly, 5 specimen trees will remain with the most prominent 53 ft. White Oak remaining in the front of the development surrounded by its own open space area along Johnnycake Rd. Thus, the Special Variance will be granted.

CONCLUSION

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 Red/Greenlined Development Plan satisfied those agencies' requirements, I find that the Developer has satisfied its burden of proof and therefore, BCC, §32-4-229(b)(1) *mandates* that the Redlined Development Plan be approved. *Elm Street, supra.*

ORDER

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **14th day of May, 2021**, that the Red/Greenlined Development Plan (Dev. Ex.

21A and 21B) otherwise known as “PATAPSCO GLEN II” Plan, be and the same are hereby is **APPROVED.**

IT IS FURTHER ORDERED that the Variance relief from the Baltimore County Zoning Regulations (“BCZR”) from:

(1) §1B01.2.C.1.C and the Comprehensive Manual of Development Policies (“CMDP”) to allow a minimum front building face to property line and/or to public street right-of-way setback of 13 ft./13 ft. in lieu of the required 25 ft./25 ft. (garage townhouse), be and the same is hereby **GRANTED**;

(2) §1B01.2.C.1.C and the CMDP to allow a minimum rear building face to property line and/or to public street right-of-way setback of 20 ft./ 20 ft. in lieu of the required 30 ft./50 ft. be and the same is hereby **GRANTED**;

(3) §1B01.2.C.1.C and the CMDP to allow a minimum side building face to side and/or to public street right-of-way setback of 20 ft./12 ft. in lieu of the required 25 ft./25 ft. be and the same is hereby **GRANTED**;

(4) §1B01.2.C.1.C and the CMDP to allow a minimum building face to tract boundary setback of 29 ft. in lieu of the required 30 ft. be and the same is hereby **GRANTED**;

(5) § 504.2 and the CMDP (Modifications of Standard) to allow seven (7) townhouse units in a group in lieu of the maximum permitted six (6) townhouse units in a group be and the same is hereby **GRANTED**;

(6) §1B01.B.1 and the CMDP to allow a reduction in the required Residential Transition Area (“RTA”) to allow units to be constructed as close as 33 ft. from the tract boundary, related grading, clearing, and infrastructure installation within the buffer, and to exceed the maximum height of 35 ft. within 100 ft. of the tract boundary, related grading, clearing, and infrastructure installation within the buffer, and to exceed the maximum height of 35 ft. within 100 ft. of the tract boundary be and the same is hereby **WITHDRAWN**;

(7) §504.2 and the CMDP to allow private rear yard areas of less than 500 sq. ft. be and the same is hereby **GRANTED**; and

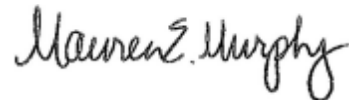
(8) §301.1.A to allow a deck (open porch) to extend into the minimum required rear yard more than the allowed 25% (requesting to have a minimum 12 ft. deep deck in rear yard) be and the same is hereby **DENIED**.

IT IS FURTHER ORDERED that the Application for Special Variance pursuant to BCC, §33-6-116 to allow the removal of 2 specimen trees as depicted in the Plan to Accompany a Special Variance Application (Dev. Ex. 12) be, and the same is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Prior to the final signature by DOP on the Red/Greenlined Development Plan, the Petitioner shall comply with the items listed in the DOP HOH Final Report dated April 29, 2021 which is incorporated herein.

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