

<b>IN RE: DEVELOPMENT PLAN HEARING</b>	*	BEFORE THE
<b>&amp; PETITION FOR SPECIAL HEARING</b>		
NE corner of York Road and	*	HEARING OFFICER
Halesworth Road		
8 <sup>th</sup> Election District	*	FOR
3 <sup>rd</sup> Councilmanic District		
(10111, 10125 and 10131 York Road	*	BALTIMORE COUNTY
and 10 Halesworth Road)		
	*	
<b>Anderson Automotive, Inc. and</b>		
<b>Anderson Motors, LLC by</b>	*	<b>HOH Case No. 08-796 (formerly</b>
<b>Bruce Mortimer</b>		<b>VIII-796 and VIII-848) and</b>
<i>Applicant/Developer</i>	*	<b>Zoning Case No. 2010-0161-SPH</b>

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**REVISED HEARING OFFICER’S COMBINED ZONING RELIEF  
AND DEVELOPMENT PLAN OPINION & ORDER**

**I. Introduction**

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for Baltimore County for a public hearing on a development proposal submitted in accordance with the development review and approval process contained in Article 32, Title 4, of the Baltimore County Code (“B.C.C.”) and a related zoning Petition for Special Hearing. Anderson Automotive, Inc. and Anderson Motors, LLC, the developer of the subject property (hereinafter “the Developer”), submitted for approval a redlined Amended Development Plan prepared by Matis Warfield, Inc., known as the “ANDERSON GM – PDM #08-796 1<sup>ST</sup> MATERIAL AMENDMENT -AND- PLAN TO ACCOMPANY PETITION FOR SPECIAL HEARING / 1<sup>ST</sup> MATERIAL AMENDMENT TO THE DEVELOPMENT PLAN TO COMBINE PDM NOS. VIII-796 AND VIII-848” (hereinafter referred to as the “redlined Anderson GM PUD Development Plan” or the “Amended Development Plan”) for property located at the northeast corner of York Road and Halesworth Road in the Cockeysville / Hunt Valley area of Baltimore

County.

In the instant matter, the Developer proposes to amend and combine two previously approved Development Plans. The two plans involved are the “Anderson Hummer PUD-C” Development Plan and the “Anderson Honda PUD” Concept Plan. The Anderson Hummer PUD-C was built out and continues to operate, while the approved Anderson Honda PUD development was never constructed. The Developer now wishes to place the Honda dealership into the existing General Motors (“GM”) dealership building located immediately north of the two PUD sites.<sup>1</sup> Correspondingly, the Developer is proposing to relocate the GM dealership to the existing Hummer building. In order to accommodate the influx of General Motors vehicles into the Hummer building (which would continue to sell Hummers and Saabs as well), a 19,824 square foot addition to the rear of the existing building will be constructed. The façade of the existing Hummer showroom will be modified to more clearly indicate that GM is the principal franchise operating out of this building. Additional changes being proposed for the subject property include, among other things, an expansion of the inventory storage / automobile storage areas, to compensate for the area lost by the proposed addition, as well as additional landscaping. It should also be noted that a small portion of the 19,824 square foot addition is proposed to extend across the existing Anderson Hummer PUD-C boundary into the Anderson Honda PUD boundary. The previously approved 47,750 square foot building included in the area that was the subject of the Anderson Honda PUD would not be built out as part of this proposed development.

In order to facilitate the aforementioned material amendments and to make future references to the property and its attendant uses less cumbersome and confusing, the Developer is also requesting certain zoning relief and has filed a Special Hearing request pursuant to Section

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<sup>1</sup> The existing GM dealership at 10139 York Road is not the subject of the instant request for approval. It was originally reviewed and approved as a standard Development Plan (i.e. it was not reviewed as a PUD).

500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the following:

- The amendment of the “Anderson Hummer PUD-C” Development Plan previously approved in Case No. VIII-796 by Deputy Zoning Commissioner John V. Murphy’s Hearing Officer’s Opinion and Development Plan Order dated October 31, 2003 and the “Anderson Honda PUD” Concept Plan previously approved in Case No. VIII-848 by Deputy Zoning Commissioner John V. Murphy’s Hearing Officer’s Review and Approval Order date February 20, 2007 (“Prior PUD Approvals”) in accordance with Section 430 of the B.C.Z.R. and Section 32-4-241, et seq. of the Baltimore County Code (“B.C.C.”); and
- The consolidation of the prior PUD approvals for PDM Nos. VIII-796 and VIII-848 into PDM No. 08-796 in accordance with Section 430 of the B.C.Z.R. and Section 32-4-241, et seq. of the B.C.C.; and
- The material amendments to non-residential Development Plans (PDM Nos. VIII-796 and VIII-848); and
- The consolidation of PDM files for PDM Nos. VIII-796 and VIII-848 into PDM No. 08-848;<sup>2</sup> and
- For such other and further relief as the Zoning Commissioner may require.

Details of the proposed development and the requested zoning relief are more fully depicted on the redlined “Anderson GM PUD” Development Plan that was accepted into evidence as Developer’s Exhibit 1.

The property was posted with the Notice of Hearing Officer’s Hearing on December 15, 2009 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing. In addition, notice of the zoning hearing was timely posted on the property on December 31, 2009 and was timely published in *The Jeffersonian* in accordance with the County Code.

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<sup>2</sup> The Petition for Special Hearing requested that the PDM files be consolidated into PDM No. VIII-848; however, the Development Plan consolidated the PDM files into PDM No. VIII-796. For housekeeping and filing purposes, PDM desires to have the consolidation of the two matters under the single PDM No. VIII-796. In order to clarify and resolve this minor discrepancy, the undersigned will consider the request to consolidate the PDM files as a request to consolidate them into PDM No. VIII-796.

## **II. History of Property and Procedural Background**

The aforementioned Hummer dealership portion of this matter was originally proposed as a Planned Unit Development – Commercial, or “PUD-C” in 2003 under Case No. VIII-796.<sup>3</sup> At that time, the PUD-C plan processing mechanism was similar to the present development plan process. The PUD-C process was created by Bill No. 47-1994 and codified in Section 440 of the B.C.Z.R. It was the PUD process until 2005.

Pursuant to this process, a concept plan of the proposed development was prepared and a Concept Plan Conference (“CPC”) was held on March 31, 2003 at 11:00 AM in the County Office Building. As the name suggests, the concept plan is a schematic representation of the proposed development and was initially reviewed by representatives of the Developer and the reviewing County Agencies at the CPC. Thereafter, as was also required in the development review process, notice of a Community Input Meeting (“CIM”) was posted and scheduled during evening hours at a location near the proposed development. The CIM would provide residents of the area an opportunity to review and comment firsthand on the Concept Plan. In this case, the CIM was held on April 28, 2003 at 7:00 PM at the Cockeysville Public Library located at 9833 Greenside Drive, where representatives of the Developer and the County attended, as well as a number of interested persons from the community. Subsequently, a Development Plan was prepared based upon the comments received at the CPC and the CIM, and the Development Plan was submitted for further review at a Development Plan Conference (“DPC”). At the DPC, the Developer’s consultants and County agency representatives further reviewed and scrutinized the plan. The DPC occurred on

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<sup>3</sup> For many years, the nomenclature for Development Plan Hearings used by the Department of Permits and Development Management (“PDM”) utilized “Roman Numerals” to identify the election district from which the proposal originated, followed by the more traditional “numbers” to designate the case numbers assigned by PDM. More recently, however, PDM has utilized numbers only; hence, the Case No. VIII-796 is now recognized as simply Case No. 08-796.

October 8, 2003 at 9:00 AM. Thereafter, a Hearing Officer's Hearing was held to consider this PUD-C proposal on October 30, 2003 in Room 106 of the County Office Building located at 111 West Chesapeake Avenue in Towson. As originally proposed in the PUD-C, the Developer sought to develop the property at 10125 York Road, zoned M.L.-I.M., into an 11,500 square foot automotive showroom and a demonstration area for Hummer vehicles. This PUD-C was approved by then-Deputy Zoning Commissioner John V. Murphy in a Hearing Officer's Opinion & Development Plan Order dated October 31, 2003 ("Hummer PUD-C").

Presently, the PUD process has changed several times since the Hummer PUD-C approval. In 2004, the PUD process was modified by Bill No. 19-2004. Thereafter, the County Council completely reworked the PUD process when it passed Bill No. 130-2005. Bill No. 130-2005 put in place what is, essentially, the current PUD mechanism. It involves passage of a County Council Resolution, submission of a concept plan, a CPC, a CIM, presentation of the plan to the Planning Board followed by a public hearing and vote, then Hearing Officer review and approval of the PUD Concept Plan.

In 2007, the Developer proposed a second PUD known as the Anderson Honda PUD on the same property as the subject property that is located at the northeast corner of York Road and Halesworth Road and extends around the Anderson Hummer PUD-C boundary. Previously, the Anderson Honda PUD site had been used as a fuel service and automotive repair station, and also was improved with a warehouse style building with an indoor sports facility, including miniature golf, video games, batting cages, etc. The Anderson Honda PUD called for development of the property into a 47,750 square foot showroom and service facility with associated parking, landscaping and circulation.

The Anderson Honda PUD first received authorization to proceed by County Council Resolution No. 64-2006. Following a CPC and CIM, the Office of Planning presented the PUD to the Planning Board. Following a public hearing on January 18, 2007, the Planning Board approved the PUD Concept Plan. The matter came before then-Deputy Zoning Commissioner John V. Murphy for review in accordance with Section 32-4-246 of the B.C.C. In Case No. VIII-848, Mr. Murphy issued an Order dated February 20, 2007 approving the PUD Concept Plan.<sup>4</sup>

Presently, the Developer -- desiring to reconfigure its existing dealerships -- seeks to amend, among other things, the previously approved "Anderson Hummer PUD-C" Development Plan. The Development Plan amendment was initially proposed as a plan refinement (also known as a non-material amendment) and the request to proceed as a refinement was granted by the Director of PDM, Timothy M. Kotroco, on May 22, 2009 (following the Development Review Committee's ("DRC") review and determination that the refinement was suitable for a limited exemption under Sections 32-4-106(b)(2) and 32-4-162) of the B.C.C.<sup>5</sup> That approval, however, was timely appealed by Eric Rockel, individually and as President of the Greater Timonium Community Council ("GTCC"), to the Baltimore County Board of Appeals in Case No. CBA-09-022. People's Counsel for Baltimore County, Peter Max Zimmerman, also entered his appearance

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<sup>4</sup> Although approved, the Anderson Honda PUD was never built out and the site has remained largely unimproved. Subsequent to the Anderson Honda PUD's approval, Bill No. 55-2007 was passed. Bill No. 55-2007 retained the current PUD process created in Bill No. 130-2005, while adding some substantive elements.

<sup>5</sup> Limited exemptions were also approved by the DRC/Director of PDM for the proposed amendments to the Anderson Honda PUD Concept Plan and existing GM Development Plan. The existing GM Development Plan, which is not included in the instant request for relief, continues to be processed as a refinement. The Developer is seeking approval of the amendment of the Anderson Honda PUD Concept Plan as part of this relief.

thereafter. At that point, the Developer had to decide whether to proceed with the plan as a material amendment, subject to the full review process, or litigate the limited exemption (non-material amendment) approval that had been appealed.<sup>6</sup> Having amicably worked with People's Counsel and Mr. Rockel regarding the substantive relief needed to approve the proposed development, and only differing initially as to the proper procedural mechanism, the Developer elected to proceed with the same proposed development, but as material amendment.<sup>7</sup>

### **III. Hearing Officer's Hearing on Amended Development Plan**

The Developer simultaneously filed the Amended Development Plan and Plan to Accompany Petition for Special Hearing. The Developer has attended and participated in a DPC, which was held on December 23, 2009 at 9:00 AM in the County Office Building, and a combined Hearing Officer's Hearing to consider the requested zoning relief and Development Plan approval that took place on January 15, 2010 in Room 106 of the County Office Building located at 111 West Chesapeake Avenue. Section 32-4-230 of the B.C.C. allows the Developer to proceed with the hearings on the proposed Amended Development Plan and the request for zoning relief in one combined Zoning Commissioner's/Hearing Officer's Hearing.

Appearing at the requisite public hearing in support of the Amended Development Plan and request for zoning relief on behalf of both the Developer and the legal owners of 10131 York Road (BKL York I, LLC) and 10125 York Road (BKL York III, LLC) was Bruce Mortimer, Managing Member of those entities. Appearing on behalf of the legal owner of 10 Halesworth

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<sup>6</sup> Ms. Demilio, Deputy People's Counsel, requested that the record reflect that the Developer's current proposal was originally processed as a request for "refinement" of the previously approved "Anderson Hummer PUD-C" Development Plan and "Anderson Honda PUD" Concept Plan and that it was only after Mr. Rockel and her Office's intervention and appeal to the Board of Appeals that the Developer agreed to proceed by way of a request for material amendment, thus requiring a DPC and combined zoning and development approval. Ms. Demilio added that her Office's appeal was principally concerned with the process (i.e. she wanted the public to be afforded an opportunity to consider the proposal at a DPC and public hearing).

<sup>7</sup> As indicated in the previous footnote, the amendment of the Anderson Honda PUD Concept Plan was packaged with the instant request for relief.

Road and 10111 York Road (the Estate of Julius and Tony W. Mandel) was Deborah C. Dopkin, Esquire.<sup>8</sup> Jason T. Vettori, Esquire and David K. Gildea, Esquire, appeared as attorneys for the Developer. Also appearing in support of the Amended Development Plan and request for zoning relief was James E. Matis with Matis Warfield, Inc., the professional engineer who prepared the Amended Development Plan and the Plan to Accompany the Petition for Special Hearing. Carole S. Demilio, Esquire, appeared on behalf of the Office of People's Counsel, and Eric Rockel appeared as an interested citizen and in his capacity as President of the GTCC. Jim Rogers, Sr., of 10102 Daventry Drive (located in the Monterey Improvement Association residential neighborhood adjacent to the subject properties), also appeared as an interested citizen, as did Chris Harvey, Secretary to the Monterey Improvement Association.

Numerous representatives of the various Baltimore County agencies, who reviewed the Amended Development Plan and zoning Petition, also attended the hearing, including the following individuals from the Department of Permits and Development Management: Colleen Kelly (Project Manager), Geoff Rice (Development Plans Review), Joe Merrey (Office of Zoning Review), and Ron Goodwin (Bureau of Land Acquisition). Also appearing on behalf of the County were David Lykens from the Department of Environmental Protection and Resource Management ("DEPRM"); and Curtis Murray from the Office of Planning. As there was no Open Space requirement for this proposal, no appearances were made from the Department of Recreation and Parks. In addition, written comments were received from the Baltimore County Fire Marshal's Office and the Maryland State Highway Administration. These and other agency remarks are contained within the case file.

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<sup>8</sup> As part of the proposed development, it is understood that the Estate of Julius and Tony W. Mandel intends to sell the properties at 10 Halesworth Avenue and 10111 York Road to the Developer.



It should be noted at this juncture that the role of the reviewing County agencies in the development review and approval process is to perform an independent and thorough review of the Development Plan as it pertains to their specific areas of concern and expertise. The agencies specifically comment on whether the plan complies with all applicable Federal, State, and/or County laws, policies, rules and regulations pertaining to development and related issues. In addition, these agencies carry out this role throughout the entire development plan review and approval process, which includes providing input to the Hearing Officer either in writing or in person at the hearing. It should also be noted that continued review of the plan is undertaken after the Hearing Officer's Hearing during the Phase II review of the project. This continues until a plat is recorded in the Land Records of Baltimore County and permits are issued for construction.

Pursuant to Sections 32-4-227 and 32-4-228 of the B.C.C., which regulate the conduct of the Hearing Officer's Hearing, I am required first to identify any unresolved comments or issues as of the date of the hearing. Upon inquiry of the Developer's attorney, Mr. Vettori, he indicated it was his understanding that all agency comments had been addressed on the redlined Amended Development Plan. Mr. Vettori also reiterated that a related request for special hearing had been filed pertaining to portions of the proposed development as well as existing conditions. Mr. Vettori indicated the reasons in support of this request would be expounded on during a proffer of testimony and evidence, and Mr. Matis' presentation of the plan.

I then asked the particular agencies to state whether they had any outstanding issues. I have summarized their responses below:

Recreation and Parks: Colleen Kelly appeared on behalf of Bruce Gill from the Department of Recreation and Parks and indicated that the project is not subject to the Adequate Public Facilities Act, Bill No. 110-1999, hence no required Open Space areas were delineated on

the plan. Therefore, Recreation and Parks offered no recommendations or comments concerning the redlined Amended Development Plan.

Planning Office: Curtis Murray appeared on behalf of the Office of Planning. Mr. Murray indicated that his department recommended approval of the redlined Amended Development Plan. He added that he has met with the Developer regarding his department's request that vehicles not be parked in the right-of-way in front of the structure. He marked the area on the redlined Amended Development Plan that was entered into evidence.

Development Plans Review (Public Works): Geoff Rice appeared on behalf of the Bureau of Development Plans Review. Mr. Rice confirmed that the Developer's plan met all of his department's requirements and comments, and that his department recommended approval of the redlined Amended Development Plan.

DEPRM: David Lykens appeared on behalf of DEPRM. Mr. Lykens confirmed that the Developer's plan met all of his department's requirements and comments, and that his department recommended approval of the redlined Amended Development Plan.

Office of Zoning Review: Joe Merrey appeared on behalf of the Office of Zoning Review. Mr. Merrey indicated that his office had no outstanding issues with the plan and that, subject to approval of the related special hearing requests, his department recommended approval of the redlined Amended Development Plan.

Land Acquisition: Ron Goodwin appeared on behalf of the Bureau of Land Acquisition. Mr. Goodwin indicated that there was no land dedication associated with this plan so there were no outstanding issues from his agency and recommended approval of the plan, provided drainage and utility easements were provided.

The Baltimore County Code clearly provides that the “Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations.” *See*, Section 32-4-229 of the B.C.C. After due consideration of the testimony and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from the various County agencies that the development plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the Redlined 1<sup>st</sup> Amended Material Amendment to the Development Plan.

#### **IV. Zoning Commissioner’s Hearing on Petition for Special Hearing**

The Developer has also requested certain zoning relief. Zoning relief is typically sought to modify development and zoning regulations as well as uses. The PUD process already affords the Developer this opportunity; however, in the instant matter, special hearing relief is necessary due to the absence of a legislatively created amendment process for PUDs to materially amend and consolidate the instant approvals and their corresponding development plans.<sup>9</sup> The special hearing, as previously indicated, is requested to amend the prior Hummer and Honda PUD approvals, the corresponding Development and Concept Plans, respectively, and to combine both the amended PUD approvals and amended Development Plans in accordance with the current PUD and development plan process, pursuant to Section 430 of the B.C.Z.R. and Section 32-4-241, et. seq. of the B.C.C.

##### **A. Material Amendment of PUD Approval Standard of Review**

Pursuant to Section 500.7 of the B.C.Z.R., the Zoning Commissioner “shall have the authority to conduct such other hearings and pass such orders thereon as shall, in his discretion, be

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<sup>9</sup> It should be noted that the limited exemption for the Anderson Honda PUD Concept Plan was not appealed. The Developer, nonetheless, has submitted same for Hearing Officer/Zoning Commissioner approval.

necessary for the proper enforcement of all zoning regulations ...” In the instant matter, the Zoning Commissioner may approve the special hearing relief requested including, but not limited to a material amendment to a PUD approval if he makes the following findings:

- (1) The proposed development meets the intent, purpose, conditions, and standards of BCC § 32-4-245;
- (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 concept 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 plan is in conformance with the goals, objectives, and recommendations of the Master Plan or area plans.

With respect to each of these findings, it is instructive that all of the County agencies referenced herein not only reviewed the Amended Development Plan and offered DPC Comments supporting the proposal, but they also offered Zoning Advisory Committee (“ZAC”) comments that were nearly identical to their DPC Comments. With regard to the required findings, the Developer adopted and incorporated the findings made in the prior PUD approvals, as more fully set forth in the prior PUD approval Pattern Books. The Consolidated and Supplemental PUD Pattern Book dated November 17, 2009 that was marked and accepted into evidence as Developer’s Exhibit 3 gives a detailed accounting of how the proposal meets the PUD criteria.

B. Modification of Standards and Compliance with Section 32-4-245 of the B.C.C.

There was ample testimony and evidence to support the finding that the PUD meets the intent, purpose, conditions, and standards of Section 32-4-245 of the B.C.C. The proposal abides by the height, area, setbacks, parking, open space and other zoning and development requirements of the underlying zones, as evidenced by the B.C.Z.R. – PUD standards chart on the redlined Amended Development Plan. The only development standard Petitioner seeks to modify, as permitted by Section 32-4-245(c)(3) of the BCC, is with respect to the proposed signage.

As indicated through testimony and evidence, a GM free-standing enterprise sign will be added to the already existing free-standing enterprise signs for Hummer and Saab. The GM, Hummer and Saab franchises are being consolidated into the existing Hummer (proposed GM) showroom and service facility. This facility consists of an existing 11,500 square foot structure with a proposed 19,824 square foot addition. Minor façade work is proposed as well to signal the conversion of the structure to primarily a GM facility. As part of the proposed façade work, three wall mounted enterprise signs are being proposed. The three freestanding enterprise signs and three wall mounted enterprise signs are the subject of the requested modification of standards. According to Section 32-4-245(c)(3) of the B.C.C., the Planning Board may approve a modification of standards if it is necessary to achieve the intent and purpose of Section 32-4-245 and a community benefit is being provided. The Developer requested a modification of standards as follows:

1. Three (3) freestanding enterprise signs (Signs A, B & C) in lieu of the maximum permitted one (1) freestanding enterprise sign (Section 450.4.5(b)(vi) of the B.C.Z.R.).
2. A maximum height of 26 feet in lieu of the maximum permitted height of 25 feet for Sign A, a freestanding enterprise sign (Section 450.4.5(b)(vii) of the B.C.Z.R.).

3. 160 square feet (measuring one side/face) in lieu of the maximum permitted area/face of 100 square feet (because premises has more than 300 feet of frontage) for Sign A, a freestanding enterprise sign (Section 450.4.5(b)(v) of the B.C.Z.R.).
4. Three (3) enterprise signs wallmounted, projecting, canopy on a single façade in lieu of the maximum permitted two (2) enterprise signs wall-mounted, projecting, canopy per façade (Section 450.4.5(a)(vi) of the B.C.Z.R.).

Initially, the modification of standards is predicated upon a finding that it is necessary to achieve the intent and purpose of Section 32-4-245 of the B.C.C. In support of the requested modifications, the Developer testified that the dealership lies at the crest of a hill along York Road and the relief requested is the minimum necessary to give notice to customers trying to locate the dealership. The Developer further indicated that, while Section 450.4.5(g)(vi) of the B.C.Z.R. may permit the three proposed freestanding enterprise signs without a modification of standards, out an abundance of caution, a modification of standards was requested to allow three freestanding enterprise signs in lieu of the maximum permitted one. Similarly, while the “service” sign could arguably be considered a directional sign (which would necessitate a modification of standards for the square footage of its face, per Section 450.4.3(v) of the B.C.Z.R., the Developer requested a modification to permit the three proposed wall mounted enterprise signs in lieu of the two such permitted signs. In addition to the justification detailed in the Consolidated and Supplemental PUD Pattern Book (page 8), the Developer offered testimony in support of the wallmounted signs. The subject site, among other things, lies at the crest of a hill and the significant screening, coupled with the arched facade design sufficiently demonstrates the necessity for the proposed

signage. These modifications are also consistent with the signage approved in the prior PUD approvals.<sup>10</sup>

### C. Community Benefit

In addition to demonstrating the modifications requested are necessary to achieve the intent and purpose of Section 32-4-245 of the B.C.Z.R., Section 32-4-245(c)(3) also predicates approval of the modification of standards upon a community benefit being provided. Each PUD and/or amendment to a PUD should be considered on its individual merits with respect to the community benefit to be provided.

In furtherance of the fact that the redevelopment meets the PUD criteria, Rick Cobert with the Baltimore County Department of Economic Development, testified how the proposal would revitalize this commercial corridor, create jobs (temporary and permanent) and serve as a catalyst for future sign designs. A Memorandum dated January 15, 2010 from Director David Iannucci reiterating these points was marked and accepted into evidence as Developer's Exhibit 5. The County agencies, through DPC and ZAC comments and corroborating testimony, have clearly indicated that there are no unresolved comments or conditions regarding the proposal. Furthermore, the present proposal is 27,926 square feet less than what was previously approved (47,750 square foot previously approved Honda PUD showroom – 19,824 square foot proposed GM showroom addition).

As previously noted, the instant redevelopment proposal is an amendment of two prior PUD approvals. While an amendment is not in and of itself exempt from an additional community benefit, the Developer set forth the following in support of its contention that a sufficient community benefit has been provided already.

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<sup>10</sup> Furthermore, while not relevant to a finding of a modification of standards pursuant to Section 33-4-245 of the BCC as noted by Deputy People's Counsel Ms. Demilio, the record makes clear the modification of standards is necessary per the three franchises' nationwide requirements for a dealership.

The Developer gave an extensive account of the history of the dealership, including but not limited to benefits which were conferred upon the community. Chris Harvey with the Monterey Improvement Association corroborated this testimony. He attested to Mr. Mortimer's proactive approach and extensive efforts in meeting with the community to discuss their concerns before seeking plan approval each and every time he has processed a plan. He further discussed how Mr. Mortimer is developing the once-dated and dysfunctional site in such a way that the community's concerns were satisfactorily addressed. In fact, at this juncture, the parties have entered into an agreement entitled "Second Amendment to Declaration of Covenants, Conditions, and Restrictions" dated April 18, 2009 that was marked and accepted into evidence as Developer's Exhibit 4. This agreement further modifies the restrictive covenant originally executed and recorded as part of the Hummer PUD-C approval, and is further evidence of the fact that Mr. Mortimer met with the Monterey Improvement Association prior to the submission of the Amended Development Plan for review and approval. Although entered into evidence as the hearing, compliance with the terms and conditions of this agreement shall be a condition of Plan approval and the granting of the zoning relief, and shall be made a part of this Order and incorporated herein.

In addition to the \$30,000 gift to the Cockeysville Branch of the Baltimore County Public Library as part of the Hummer PUD-C approval, the Developer has provided a 50 foot by 100 foot buffer along the eastern portion of the site. This buffer has a sizable berm, extensive landscaping, and a fence -- all of which serve to insulate the residential community from the commercial corridor. According to the Developer's representatives, the fence was constructed at a cost of \$30,000. The fence was constructed as a benefit to the community and as a good will gesture. In addition, as shown on the plan, several trees and bushes are being planted throughout the site at



the Developer's expense. In my judgment, no further benefit, above and beyond what the Developer has already provided, is necessary at this time.

#### D. Conformance with Special Exception Standards

On Page 20 of the Supplemental PUD Pattern Book, in a section entitled Special Exception Standards Report, the Developer sets forth how the proposed development will conform to Section 502.1.A, B, C, D, E and F of the B.C.Z.R. and will constitute a good design, use and layout of the proposed site. The proposed development will not be detrimental to the health, safety or general welfare of the locality as it is merely a reconfiguration of the previously approved automobile dealership. Furthermore, it will represent a net decrease in square footage from what was previously approved. The automobile dealership includes a landscaped buffer and other amenities.

It will not tend to create congestion on roads and streets. The Prior PUD Pattern Books demonstrate that the automobile dealership will not create congestion on the surrounding roads and streets. The entrance location at York Road already exists. The internal right of way was designed in such a way that loading and unloading inventory will not adversely impact traffic on York Road. It will not create a potential hazard from fire or other danger. There are no other buildings in the immediate vicinity of the proposed addition to the existing structure, and the proposal meets or exceeds fire code requirements. It will not tend to overcrowd land and create undue concentration of population. The proposed floor area ratio ("FAR") for the development is 0.19 -- far below the allowable 2.0. It will not interfere with adequate provision for schools, parks, water, sewerage, transportation or other public requirements, as described above. The instant proposal has less of an impact upon parks, water and sewerage, transportation and other public requirements than the automobile dealerships approved under the prior PUD approvals due to the fact that the square footage is being reduced. There will be no impact upon schools, as this

is a commercial development. It will not interfere with adequate light and air. The proposed placement of the addition is oriented a sufficient distance from the residential community to the east. The existing buffer with its berm, fence, and landscaping stands out in the corridor as an example of how a commercial use can coexist with adjoining residential uses. Less than 10% of the permitted FAR is being utilized. Furthermore, the use will constitute a good design, use and layout of the site. Evidence of this can be found in the fact that the restrictive covenant was amended to accommodate the proposal. The testimony of Mr. Harvey, as well as the testimony of Mr. Cobert and other Baltimore County agency representatives also supports such a finding.

## **V. Other Issues**

### **A. Access from Halesworth Road**

Testimony and evidence demonstrates that, despite prior curb cut approval from Halesworth Road for two means of access to the property known as 10 Halesworth Road (as indicated on the plan), the Developer has indicated on the instant plan that the access is not to be developed at this time. In addition, the Developer modified its Utility Agreement with the County to reflect the fact that the Developer does not intend to construct the two means of access to Halesworth Road at this time. Ms. Dopkin, appearing as counsel on behalf of the property owner, expressed her concern that the Developer's plan seemingly does not reserve access to Halesworth Road for the property owner in the event the sale of 10 Halesworth Road and 10111 York Road is not consummated as anticipated. For this reason, Ms. Dopkin, out of an abundance of caution, requested that this Hearing Officer/Deputy Zoning Commissioner reserve the right to re-establish a commercial entrance allowing direct access to 10 Halesworth Road from Halesworth Road without the necessity for further public hearing. I find that Ms. Dopkin's request on behalf of the property owner, while potentially moot if the transaction between the Developer and the property

owner is completed, is nonetheless reasonable and appropriate, and is hereby incorporated into this decision, provided such a request to reopen access, if necessary, is in accordance with the procedures established by the Baltimore County Department of Permits and Development Management and requirements set forth by the Baltimore County Department of Public Works, Bureau of Highways.

#### B. Reasonable Expectation of Construction

The testimony and evidence clearly support a finding that there is a reasonable expectation the proposal will be developed to the full extent of the plan. GM and Honda have authorized the proposed plan. The Developer has been trying to process this plan for approximately a year now, because he believes this will give the dealership the greatest chance for prosperity going forward.

#### C. Compliance with Section 430 of the B.C.Z.R.

Section 430 of the B.C.Z.R. is principally concerned with uses. Having already approved the automobile dealership use in the prior PUD approvals, the use of the site has not changed in this respect. In addition, no density has been added (as contemplated by Section 32-4-242(c)(2) of the B.C.C.), as the instant development is commercial.

#### D. Master Plan Conformance

The compatibility of the proposal with the Master Plan is demonstrated on page 22 of the Consolidated and Supplemental PUD Pattern Book. The exhibit on page 21 illustrates how Anderson lies squarely in the middle of a commercial corridor. In light of the surrounding zoning, which has been in place since the 1970s, a commercial use -- particularly one that has been in place for several years -- is clearly compatible with the character of the commercial corridor. Furthermore, it will advance many goals of the Master Plan (namely economic development and corridor improvement). Finally, it conforms to key policies and specific concerns expressed in the

more locally focused Hunt Valley/Timonium Master Plan.

## **VI. Conclusion**

For each of the foregoing reasons, I am persuaded to grant the requested special hearing relief. The requested special hearing relief will facilitate the reconfiguration of the franchises on an already existing automobile dealership campus. The reconfiguration will ensure that the dealership will continue to serve the community. The Anderson Hummer PUD-C and Honda PUD approvals will hereafter be referred to as the “Anderson GM PUD.” The corresponding Development Plan will be referred to as the “Anderson GM PUD Development Plan.”

Lastly, it should be noted that my decisions with regard to the Petition for Special Hearing and the Hearing Officer’s Hearing considering the proposed redevelopment are treated differently for appeal purposes. The decisions as to the zoning Petitions are made by me sitting as Deputy Zoning Commissioner. An appeal from those decisions is a *de novo* appeal to the Board of Appeals of Baltimore County pursuant to B.C.C. Section 32-4-401. The decision as to approval of the Amended Development Plan is made by me sitting as Hearing Officer for Baltimore County. An appeal from that decision is on the record to the Board of Appeals pursuant to B.C.C. Section 32-4-281. Both appeals must be filed within 30 days from the date of this Order.

Pursuant to the advertisement, posting of the property, and public hearing held thereon, the requirements of which are contained in Article 32, Title 4, of the Baltimore County Code, the Anderson GM PUD Development Plan shall be approved consistent with the comments contained herein. The requested special hearing relief “for such other and further relief as the Zoning Commissioner may require” is dismissed as moot. All other special hearing relief shall be granted.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County, this 3<sup>rd</sup> day of March, 2010, that the redlined “ANDERSON GM PUD Development Plan” for the Developer, marked and accepted into evidence as Developer’s Exhibit 1, be and is hereby **APPROVED**; and

IT IS FURTHER ORDERED by this Deputy Zoning Commissioner that the Special Hearing relief requested as follows:

- The amendment of the “Anderson Hummer PUD-C” Development Plan previously approved in Case No. VIII-796 by Deputy Zoning Commissioner John V. Murphy’s Hearing Officer’s Opinion and Development Plan Order dated October 31, 2003 and the “Anderson Honda PUD” Concept Plan previously approved in Case No. VIII-848 by Deputy Zoning Commissioner John V. Murphy’s Hearing Officer’s Review and Approval Order date February 20, 2007 (“Prior PUD Approvals”) in accordance with Section 430 of the B.C.Z.R. and Section 32-4-241, et seq. of the Baltimore County Code (“B.C.C.”); and
- The consolidation of the prior PUD approvals for PDM Nos. VIII-796 and VIII-848 into PDM No. 08-796 in accordance with Section 430 of the B.C.Z.R. and Section 32-4-241, et seq. of the B.C.C.; and
- The material amendments to non-residential Development Plans (PDM Nos. VIII-796 and VIII-848); and
- The consolidation of PDM files for PDM Nos. VIII-796 and VIII-848 into PDM No. 08-796,

be and are hereby **GRANTED**.

The aforementioned approval and relief granted herein shall be subject to the following as conditions precedent:

1. Any appeal of this decision must be taken within thirty (30) days from the date of this Order. If an appeal of this decision is not taken within the time prescribed, then this decision shall constitute a final Order as to the Zoning relief requested and a final Development Plan Order as to the Hearing Officer’s Hearing, and shall be subject to the appeal provisions contained in the Baltimore County Zoning Regulations and Section 32-4-281 of the Baltimore County Code.
2. The Developer shall comply with the terms of the “Second Amendment to Declaration of Covenants, Conditions and Restrictions” dated April 18, 2009 by BKL York I, LLC for the benefit of Monterey Improvement Association, attached hereto as Developer’s

3. In the event the sale of 10 Halesworth Road and 10111 York Road is not consummated between the Developer and the property owner, the property owner reserves the right to re-establish a commercial entrance allowing direct access to 10 Halesworth Road from Halesworth Road without the necessity for further public hearing, provided such a request to reopen access is in accordance with the procedures established by the Baltimore County Department of Permits and Development Management and requirements set forth by the Baltimore County Department of Public Works, Bureau of Highways.

\_\_\_\_SIGNED\_\_\_\_\_  
THOMAS H. BOSTWICK  
Hearing Officer/Deputy Zoning Commissioner  
for Baltimore County

THB:pz