

<b>IN RE: DEVELOPMENT PLAN HEARING</b>	*	BEFORE THE
<b>AND PETITION FOR VARIANCE</b>		
	*	OFFICE OF
<b>(Pikeswood Apartments aka</b>		
<b>Schnaper Property)</b>	*	ADMINISTRATIVE HEARINGS
Jan Schnaper, Owner/Developer	*	FOR
	*	BALTIMORE COUNTY
	*	
	*	<b>HOH Case No. 02-163 and</b>
	*	<b>Zoning Case No. 2012-0331-A</b>

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**ADMINISTRATIVE LAW JUDGE’S COMBINED ZONING AND  
DEVELOPMENT PLAN OPINION & ORDER**

This matter comes before the Office of Administrative Hearings 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.”). The hearing also involves a request for variance relief under the Baltimore County Zoning Regulations (B.C.Z.R.). Jan Schnaper, the developer of the subject property (hereinafter “the Developer”), submitted for approval a redlined Development Plan prepared by DS Thaler & Associates, Inc., known as “Pikeswood Apartments aka Schnaper Property.”

In the instant matter, the Developer proposes 232 apartments of varying bedroom count contained within four multistory buildings and five single-family detached houses<sup>1</sup> on 41.0 acres, more or less. The site is predominantly wooded with a riparian feature. The site is bisected by the right of ways for the future Owings Mills Boulevard extension, Metropolitan Boulevard (a “paper” road) and underground utilities.

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<sup>1</sup> As originally filed, the Developer sought approval for six single-family dwellings on the site. The Developer indicated at the hearing however that in response to community concerns approval was sought for only five single-family dwellings, as depicted on Developer’s Exhibit 3.

The existing Plat for the Pikeswood Apartments is recorded among the Land Records for Baltimore County in Plat Book 40 at Page 142. The site is the subject of the revised “Preliminary Plan for Pikeswood Apartments” approved by the Joint Subdivision Planning Committee (JSPC) on March 30, 1977. The Development hearing seeks to amend this original plan with the aforementioned apartment units and single-family dwellings.

In addition to the Hearing Officer’s Hearing, the Developer is requesting certain zoning relief and has filed a Variance request pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

**(Multi-Family) - B.C.Z.R. §§ 504.2, 1B01.2.C.1.e, 1B02.2.A and Comprehensive Manual of Development Policies (CMDP), Division II, Section A –**

- (1) To allow a minimum 23' setback from a rear building face to tract boundary in lieu of the required 40' setback (Building ‘A’),
- (2) To allow a minimum 23' building setback to a public street right-of-way for an arterial road in lieu of the required 45' (25' + 20') (Building ‘A’),
- (3) To allow a minimum 6' setback from a building face to tract boundary in lieu of the required 40' for front or rear and 30' for side building face (Buildings ‘A’, ‘B’ and ‘C’),
- (4) To allow a minimum 23' setback from a side building face to side building face in lieu of the required 56' (1 foot of setback for every foot of building height to the soffit line) (Buildings ‘A’, ‘B’, ‘C’ and ‘D’),
- (5) To allow a 5' setback from a building face to edge of private road in lieu of the required 35' (Buildings ‘A’, ‘B’, ‘C’, and ‘D’),
- (6) To allow a maximum building length of 265' in lieu of the maximum permitted 240' (Buildings ‘A’, ‘B’, and ‘D’), and
- (7) To allow a maximum building height of 70' in lieu of the permitted 50' (DR 5.5) and 60' (DR 16) (Buildings ‘A’, ‘B’, ‘C’ and ‘D’).

**(Single-Family) - B.C.Z.R. §§ 301.1.A, 504.2, 1B01.2.C.1.b and Comprehensive Manual of Development Policies (CMDP), Division II, Section A –**

(1) To allow a minimum 18' setback from a rear building face to tract boundary in lieu of the required 30' (Lots #1 & #2), and

(2) To allow a deck to project into the rear yard by 10' resulting in an 8' rear yard setback in lieu of the required 22.5' setback (Lots #1 & #2).

**(Parking) - B.C.Z.R. §§ 409.6.A.1 and 409.7**

(1) To allow 186 parking spaces to be provided in lieu of the 194 parking spaces (Buildings 'C' and 'D'), and

(2) To allow off-site parking (14 spaces along Schnaper Drive) to support Buildings 'A' and 'B' to be located a maximum distance of 970' in lieu of the 300' permitted.

Although at first blush this seems like an unwieldy series of requests, the Developer's engineer greatly simplified the evaluation process by preparing a color-coded map showing where on the plan each variance was requested. See Developer's Exhibit 8.

Details of the proposed development and the requested zoning relief are more fully depicted on the two-sheet redlined Amended Development Plan that was marked and accepted into evidence as Developer's Exhibits 1A and 1B. The property was posted with the Notice of Hearing Officer's Hearing and Zoning Notice on August 15, 2012 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing.

Appearing at the requisite Hearing Officer's Hearing in support of the Development Plan on behalf of the Developer and property owner was Jan Schnaper, Stacey A. McArthur, Brian Childress, and David Thaler, with DS Thaler & Associates, Inc., the consulting firm that prepared the site plan. Patricia A. Malone, Esquire with Venable, LLP, appeared and represented the

Developer. Also appearing as interested citizens were William Johnson, Ray Paige, Daniel Stein, Kim Blackwell, Cheryl Griffin, Daniel Murray, James Brown, Jr., and Carolyn Samuels.

Numerous representatives of the various Baltimore County agencies, who reviewed the Development Plan, also attended the hearing, including the following individuals from the Department of Permits and Development Management: Jan Cook (Project Manager), Dennis Kennedy and Bruce Gill (Development Plans Review [DPR]), Brad Knatz, Real Estate Compliance, and Aaron Tsui (Office of Zoning Review). Also appearing on behalf of the County were David Lykens from the Department of Environmental Protection and Sustainability (DEPS), and Lloyd Moxley from the Department of Planning. 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.

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 §§ 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. At the hearing, each of the Baltimore County agency representatives identified above indicated that the redlined Development Plan (marked as Developer's Exhibits 1A and 1B) addressed any and all comments submitted by their agency, and they each recommended approval of the plan.

Stacey A. McArthur, a registered landscape architect, was the Developer's sole witness. Ms. McArthur noted that the redlined notations on the Plan addressed each of the comments submitted at the Development Plan Conference (DPC) by County representatives. The revisions included modification of the right-of-ways along proposed Owings Mills Boulevard, street lighting detail, construction of a sidewalk along the front of the proposed single-family dwellings to Allenswood Road, and the reduction from six to five proposed single-family dwellings. In conclusion, Ms. McArthur testified that in her opinion, the plan (Developer's Exhibits 1A and 1B) complied with all applicable provisions of the B.C.C. and development regulations.

#### COMMUNITY CONCERNS

Several members of the community spoke at the hearing and identified concerns with the project. Specifically, the community objected to the proposed address numbering of the new single-family dwellings, and also wanted a vegetative buffer between the existing single-family dwellings on Janbrook Road and the proposed multifamily buildings.

As I indicated at the hearing, I think each of these concerns is valid, and I will address each in the Order that follows. With respect to the house numbering, I am not inclined to adopt the DPC recommendations of Ms. Kemp and Mr. Muddiman, because to do so would require that an existing resident at 9509 Tulsemere Road (who according to community members has lived at the

location for 40 years) be assigned a new street name and house address. Instead, as suggested by Developer's counsel, the more logical plan is to reflect the street and address change between lots 2 and 3 of the proposed single-family dwellings, which is the approximate location where the County has a street sign reflecting the change from Tulsemere Road to Janbrook Road. This is reflected as a redlined change on the Development Plan. See Exhibit 1A.

The issue of a vegetative buffer between the existing single-family dwellings on Janbrook Road and the proposed multifamily buildings is equally valid. While both Mr. Moxley and Ms. McArthur (See Developer's Exhibit 7) opined that the proposed apartment buildings were compatible with the neighborhood (and I do not gainsay those opinions) it is at the same time true that these are dissimilar housing types, and the apartments are obviously a much more dense and intense housing configuration. As such, I will require the Developer to provide buffering of such type and size that will shield the existing single-family dwellings from a direct line of sight to the proposed multifamily buildings.

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." B.C.C. § 32-4-229. 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 Development Plan.

#### ZONING REQUESTS - VARIANCES

In addition to the Development Plan approval, the Developer sought a variety of variances under the B.C.Z.R. Each of the variance requests was described in detail earlier in this Opinion,

and was graphically depicted on a zoning plan (Exhibit 8) produced by Developer's engineer.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioner has met this test.

Ms. McArthur testified the property is indeed unique, for several reasons. The site is bisected by right-of-ways for Owings Mills Boulevard and Metropolitan Boulevard and easements for natural gas pipelines. These easements essentially carve the site into three distinct parcels, which are each uniquely shaped and present development constraints. Most notably, according to Ms. McArthur, is that these unique features require the Developer to cluster the improvements in three compact areas, which happens to allow for preservation of the environmental features on the site.

In addition, the Developer would suffer a practical difficulty if variance relief was denied, in that they would need to redesign and reconfigure (at great cost) the development plan and pattern book. In addition, there will be no negative impact upon the surrounding community, and as such, the variances will be granted.

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 Pikeswood Apartments aka Schnaper Property Development Plan shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 19<sup>th</sup> day of September, 2012, that the redlined “**PIKESWOOD APARTMENTS AKA SCHNAPER PROPERTY**” Development Plan, marked and accepted into evidence as Developer’s Exhibits 1A and 1B, be and is hereby **APPROVED**.

IT IS FURTHER ORDERED that the Petition for Variance relief pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

**(Multi-Family) - B.C.Z.R. §§ 504.2, 1B01.2.C.1.e, 1B02.2.A and Comprehensive Manual of Development Policies (CMDP), Division II, Section A –**

- (1) To allow a minimum 23' setback from a rear building face to tract boundary in lieu of the required 40' setback (Building ‘A’),
- (2) To allow a minimum 23' building setback to a public street right-of-way for an arterial road in lieu of the required 45' (25' + 20') (Building ‘A’),
- (3) To allow a minimum 6' setback from a building face to tract boundary in lieu of the required 40' for front or rear and 30' for side building face (Buildings ‘A’, ‘B’ and ‘C’),
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- (5) To allow a 5' setback from a building face to edge of private road in lieu of the required 35' (Buildings ‘A’, ‘B’, ‘C’, and ‘D’),
- (6) To allow a maximum building length of 265' in lieu of the maximum permitted 240' (Buildings ‘A’, ‘B’, and ‘D’), and
- (7) To allow a maximum building height of 70' in lieu of the permitted 50' (DR 5.5) and 60' (DR 16) (Buildings ‘A’, ‘B’, ‘C’ and ‘D’).

**(Single-Family) - B.C.Z.R. §§ 301.1.A, 504.2, 1B01.2.C.1.b and Comprehensive Manual of Development Policies (CMDP), Division II, Section A –**

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**(Parking) - B.C.Z.R. §§ 409.6.A.1 and 409.7**

(1) To allow 186 parking spaces to be provided in lieu of the 194 parking spaces (Buildings 'C' and 'D'), and

(2) To allow off-site parking (14 spaces along Schnaper Drive) to support Buildings 'A' and 'B' to be located a maximum distance of 970' in lieu of the 300' permitted,

be and are hereby **GRANTED**.

The Development Plan and zoning approvals herein are expressly subject to and conditioned upon the following:

1. The addresses and house numbering for the five single-family dwellings shall be as proposed on Developer's Exhibit 1A, with the "split" between Janbrook and Tulsemere Roads occurring between lots 2 and 3; and
2. The Developer shall provide a vegetative buffer at the rear of the existing single-family dwellings along Janbrook Road (Nos. 3808-3838). The vegetative material shall be of sufficient height and density to provide a visual screen from the multifamily apartment buildings.

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

Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw