

<b>IN RE: DEVELOPMENT PLAN HEARING &amp; PETITIONS FOR SPECIAL HEARING AND VARIANCE</b>	*	BEFORE THE OFFICE OF
9 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
5 <sup>th</sup> Councilmanic District	*	FOR
(627 York Rd. / 703 Washington Ave.)	*	BALTIMORE COUNTY
<b>(Federal Realty Investment Trust)</b>	*	
FR White Marsh, Inc., c/o Federal Realty Investment Trust, <i>Owner/Developer</i>	*	<b>HOH Case No. 09-0819 and 2015-0081-SPHA</b>

\* \* \* \* \*

**ADMINISTRATIVE LAW JUDGE’S  
DEVELOPMENT PLAN OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (OAH) 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.”). David H. Karceski, Esquire and Adam M. Rosenblatt, Esquire, with Venable, LLP, on behalf of FR White Marsh, Inc., c/o Federal Realty Investment Trust, *legal owner/developer* (hereinafter the “Developer”), submitted for approval an eight-sheet greenlined Development Plan (“Plan”) prepared by Bohler Engineering, known as “Federal Realty Investment Trust Property.”

Developer proposes in the Towson core a 7-story residential building with 5 stories of apartments (105 – 1 or 2 bedroom units) and 2 stories of parking with vehicular access off of both Joppa Road and Washington Avenue. Details of the proposed development are more fully depicted on the eight-sheet Development Plan that was marked and accepted into evidence as Developer’s Exhibit 10A-10H.

In addition to the Hearing Officer’s Hearing (HOH), the Developer is requesting Special Hearing relief pursuant to § 500.7 of the B.C.Z.R., to permit a projecting identification sign on a

multifamily building in the C.T. District of Towson.

The Developer filed an amended petition (Developer's Exhibit 15) for Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- (1) From § 450.5.B.6.b - To permit a sign to extend 9 ft. from the wall to which it is attached in lieu of the permitted 4 ft. (Sign B); and
- (2) From § 450.5.B.6.e - To permit a projecting sign's supporting elements to be visible.

The property was posted with the Notice of Hearing Officer's Hearing and Zoning Notice, both on November 18, 2014, for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing. The undersigned conducted the hearings on December 19, 2014 and December 8, 2015, at 10:00 AM, Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland.

In attendance at the Hearing Officer's Hearing (HOH) in support of the Plan on behalf of the Developer and property owner was Stephen Moriak, Brian Donley, Ken Schmid, Mark Keeley, Chris Armstrong, and Matt Mueller. Also in attendance was Joseph Ucciferro and Hank Alinger, with Bohler Engineering, the firm that prepared the site plan. David H. Karceski, Esquire and Adam M. Rosenblatt, Esquire with Venable, LLP, represented the Developer. At the initial hearing, several members of the community attended and expressed concern with various aspects of the project. However, prior to the second hearing date, the community protestants and their attorney submitted letters (Developer's Exhibits 29 and 30) indicating that they no longer opposed the project. One citizen, Carolyn Parker Knott, expressed concerns about future tenants walking their dogs in the nearby Prospect Hill Cemetery (included on the

Baltimore County Landmarks List), and a condition will be included in the Order below to address that issue.

Representatives of the various Baltimore County agencies who reviewed the Plan also attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections (PAI): Jan M. Cook, Project Manager, Vishnu Desai and Jean M. Tansey (Development Plans Review [DPR]), LaChelle Imwiko, Real Estate Compliance, and Jeff Perlow for Leonard Wasilewski (Office of Zoning Review). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (DEPS), and Jenifer Nugent from the Department of Planning (DOP).

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 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. 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. Each of the Baltimore County agency representatives identified above indicated that the greenlined Development Plan (marked as Developer's Exhibit 10A-10H) addressed any comments submitted by their agency, and they each recommended approval of the

Plan. Ms. Tansey, the County's landscape architect, testified that the Developer has obtained the approval of a schematic landscape plan for the site, and that a final landscape plan would be completed in the next phase of review. She also indicated Developer was paying a fee in the amount of \$5,000 in lieu of providing the required 105,000 sq. ft. of Local Open Space. Baltimore County Exhibit 1. The DOP prepared a school impact analysis (Baltimore County Exhibit 2) which demonstrated that none of the schools in the relevant district exceeded 115% of state rated capacity, as required by state and county law. The Developer also presented an email from the DOP confirming that the school analysis submitted at the initial hearing date remained valid as of December 2015. Developer's Exhibit 14.

#### DEVELOPER'S CASE

The Developer's first witness was Joseph Ucciferro, with Bohler Engineering, whose firm prepared the Development Plan. Mr. Ucciferro, a professional engineer who was accepted as an expert, explained in detail the eight-sheet Development Plan. Mr. Ucciferro described the layout of the project, and discussed the red and green line changes to the Plan, which addressed County agency comments. Mr. Ucciferro opined the Developer satisfied all County rules and regulations in connection with the Development Plan.

The next witness was Brian Donley, who is Director of Development for Federal Realty Investment Trust. Mr. Donley testified that Federal Realty has owned the site for about 10 years, and proposes to construct the project with a mix of one-bedroom (approximately 60%) and two-bedroom (approximately 40%) apartment units, with monthly rentals in the range of \$1,250 to \$2,200. The primary purpose of Mr. Donley's testimony was to indicate that he had engaged in discussions with Ms. Knott to address her concerns related to animal waste at the Prospect Hill Cemetery, and in addition to instituting a waste management program, Mr. Donley testified that

tenants violating the policies regarding dog ownership would be penalized.

Thereafter, the Developer presented three additional expert witnesses, each of whom provided brief testimony concerning the project. First was Hank Alinger, a registered landscape architect employed by Bohler Engineering. Mr. Alinger explained that Baltimore County has approved a schematic landscape plan for the project, and that he also met with the County's Landscape Architect (Jean Tansey) who indicated that the greenlined revisions shown on the Plans were acceptable. Mr. Alinger also testified that B.C.Z.R. § 260 (Design Guidelines) was not applicable in this case, which involves a "core" urban development, rather than a suburban single-family housing project.

Architect Stephen Moriak, who is employed by Dwell Design Studio, was the next expert witness to testify. Mr. Moriak prepared a 36-page Pattern Book for the project (Developer's Exhibit 19), which provides renderings, elevation drawings, floor plans and additional details concerning the project. Mr. Moriak explained that this Pattern Book was reviewed and approved by the Design Review Panel (DRP) [Developer's Exhibit 20], and that the DOP (following the DRP's review) approved recently two design elements involving the front entrance to the building and a rooftop amenity, as shown on pages 11 and 28 of the Pattern Book. Developer's Exhibit 21.

The final witness in the case was Ken Schmid, a traffic planner accepted as an expert witness. Mr. Schmid indicated that his firm prepared a traffic impact study for this project (Developer's Exhibits 25 and 26) which revealed that the surrounding roadway network is more than sufficient to accommodate the proposed development. The witness noted that both the State Highway Administration and Baltimore County (Developer's Exhibits 27 and 28) concurred with

the analysis and conclusions found in his firm's traffic impact study. Finally, Mr. Schmid noted that the proposed loading area (located along West Joppa Road) shown on the Plan for use by tenants appeared to be of a sufficient size to accommodate U-Haul trailers and similar vehicles.

The Baltimore County Code 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 (as summarized above) and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from the various County agencies that the Plan satisfies those agencies' requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the Development Plan.

## ZONING REQUESTS

### Special Hearing and Variances

In addition to the Development Plan approval, the Developer sought special hearing and variance relief under the B.C.Z.R. Though the original zoning petition sought six variances for off-street parking and signage, the amended petition seeks just two variances related to one particular sign. The sign (shown on the Plan as "Sign B") would be a projecting identification sign with the name of the complex; i.e., "Flats at 703." Developer's Exhibit 16B.

Mr. Ucciferro referred to this as a "blade sign," and he explained it will be positioned along the York Road frontage of the building. The witness testified the proposed building is located at the "crest" of York Road, and that the topographical change along York Road and across the site would make it difficult (without variance relief) to provide signage that would allow motorists to safely identify the apartment complex. I concur that these attributes make the site unique, and that the Petitioner would experience a practical difficulty if the regulations were

strictly interpreted. As such, I believe the Petitioner has met its burden under Cromwell v. Ward, 102 Md. App. 691 (1995), and the petitions for variance and special hearing will be granted.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 11<sup>th</sup> day of December, 2015, that the “**FEDERAL REALTY INVESTMENT TRUST DEVELOPMENT PLAN**”, marked and accepted into evidence as Developer’s Exhibit 10A-10H, be and is hereby **APPROVED**, subject to the condition noted below:

- Developer shall notify tenants that all dogs must be walked only in the “dog walk area” shown on the Plan. Developer also agrees to institute a waste management program whereby all resident dogs would have a DNA test which would facilitate identification of un-scooped waste.

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the B.C.Z.R., to permit a projecting identification sign on a multifamily building in the C.T. District of Towson, be and is hereby **GRANTED**.

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

- (1) From § 450.5.B.6.b - To permit a sign to extend 9 ft. from the wall to which it is attached in lieu of the permitted 4 ft. (Sign B); and
- (2) From § 450.5.B.6.e - To permit a projecting sign's supporting elements to be visible,

be and are hereby **GRANTED**.

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