

IN RE: PLANNED UNIT DEVELOPMENT & *	BEFORE THE
PETITIONS FOR SPECIAL HEARING,	OFFICE OF
SPECIAL EXCEPTION & VARIANCE *	OFFICE OF
(Wise Ave. & Grays Road)	OFFICE OF
15 th Election District *	ADMINISTRATIVE HEARINGS
7 th Councilmanic District *	FOR
COUNTRY CLUB ESTATES PUD	BALTIMORE COUNTY
(Sparrows Point Country Club) *	CASE NOS. 15-1013 &
CRD Golf, LLC, <i>Owner/Developer</i> *	2019-0375-SPHXA

* * * * *

ADMINISTRATIVE LAW JUDGE’S OPINION AND ORDER ON PLANNED UNIT DEVELOPMENT (PUD)

This matter comes before the Office of Administrative Hearings (“OAH”) for a hearing pursuant to § 32-4-227 of the Baltimore County Code (“BCC”). In accordance with the development regulations codified in BCC Article 32, Title 4, CRD Golf, LLC (“Developer”) seeks approval of a Development Plan (the "Plan") prepared by D.S. Thaler & Associates, LLC, for the proposed development of 53 attached villas, 193 townhouses and 60 single-family detached units for a total of 306 (the "subject property"). The proposed development is more particularly described on the six sheet redlined Plan submitted into evidence and marked as Developer's Exhibits 1A-1F.

The Baltimore County Council adopted Resolution 23-18 on March 19, 2018 stating that the proposed PUD site is eligible for County review in accordance with § 32-4-241 et. seq. of the BCC *See* Developer’s Exhibit 2. The community benefit provided by the PUD consists of contributions totaling \$15,000.00 towards projects as identified in Resolution 23-18.

The Developer is proposing to develop a residential development PUD consisting of 60 single-family detached homes, 193 single-family attached units, 53 “villa town houses” and an integrated 17.8 acres, more or less, park/environmental area surrounding the existing pond, and is located within the Urban Rural Demarcation Line (“URDL”). The existing Sparrows Point Country Club (“Club”) and golf course will remain, with the total (approximately 65%) of the site is within the Chesapeake Bay Critical Area (“CBCA”). The project is subject to review by the Baltimore County Growth Allocation Review Committee (“GARC”) and the Chesapeake Bay Critical Area Commission (“CBCAC”).

The site was the subject of 2012 Comprehensive Zoning Map Process (“CZMP”) Issue No. 7-008. The County Council granted 40.03 acres of DR 5.5, 16.62 acres of DR 1 and 0.41 acres of RC 20. A PUD application was submitted to the County Council on November 7, 2017. A post-submission Community Input Meeting (“CIM”) occurred on December 5, 2017. A Concept Plan was filed with Baltimore County on June 13, 2018.

A Projected Impacts of Development Report, dated November 7, 2017, was submitted as part of the PUD application. The report indicated that the project is not located in any failing transportation or water and sewer area, fire and police protections are adequate to include all residences to have sprinklers, student capacities do not exceed State Rated Capacity (“SRC”) limits in the affected elementary, middle and high school districts. The report further indicated that the PUD design responds positively to the requirement of the CBCA requirements and storm water management will be installed pursuant to Baltimore County standards.

The Developer also filed a Petition for Special Hearing to approve the following: (1) Continuation of the country club as a legal non-conforming use, with a permitted maximum 25% increase in ground floor area, within the DR 1, DR 5.5 and RC 20 zoned portions of the

property pursuant to Baltimore County Zoning Regulations (“BCZR”) Section 104’ (2) To approve the nonconforming status of any existing building and parking facilities to remain on the property pursuant to BCZR Section 104; (3) To approve the provision of 253 parking spaces for the country club pursuant to BCZR Section 409.6.A; and (4) To confirm that the proposed location of the tennis and sport courts, more than 100 ft. from the boundary of the closest proposed residential lot line, satisfies BCZR Section 409.6.A.3.

In addition, the Developer filed a Petition for Special Exception pursuant to BCZR Sections 1B01.1.C.4 and 1A05.2.D.8, for a country club within the DR 1, DR 5.5 and RC 20 zoned portions of the property.

Furthermore, the Developer filed a Petition for Variance as follows: (1) From BCZR Section 233.1.B, to allow parking facilities on the BM zoned portion of the property associated with the country club to be located as close as 28 ft. to proposed property boundary line in lieu of the 60 ft. setback required; (2) From BCZR Section 235C.1, to allow a building height of 45 ft. in lieu of the maximum height of 35 ft. on the BM zoned portion of the property within 750 ft. of an RC Zone, and (3) From BCZR Section 409.8.A.1 and the Baltimore County Landscape Manual, to waive certain landscaping requirements for the parking facilities associated with the country club, as well as a special variance to approve removal of 51 “specimen trees”.

A Development Plan Conference (“DPC”) was held between the Developer’s consultants and various Baltimore County agencies, to consider the project. In this case, the DPC was held on August 21, 2019. At the DPC, the Baltimore County agencies responsible for the review of the Development Plan submit written comments regarding whether the plan complies with the various Baltimore County regulations governing land development. The Hearing Officer’s Hearing was held before me on September 13, 2019.

Appearing at the public hearing on behalf of the Developer were Ronald Belbot, Stacey A. McArthur, registered landscape architect, and David S. Thaler with D.S. Thaler & Associates, LLC, the engineering firm that prepared the Plan, and Mark Keeley, a certified traffic engineer. Conor Gilligan, a representative of the Developer, although not sworn, appeared at the hearing and answered a question regarding the project posed by one of the citizen participants. Patricia A. Malone, Esquire and Adam Rosenblatt, Esquire with Venable, LLP appeared as counsel for the Developer. A number of neighbors attended the hearing and expressed concerns about various aspects of the project. Their names are included in the Citizen's "Sign-In Sheet".

Representatives of the various Baltimore County agencies who reviewed the Plan attended the hearing, including the following individuals: Darryl D. Putty, Project Manager, Development Processing, Department of Permits, Approvals and Inspections ("PAI"); Jim Hermann, Baltimore County Landscape Architect – PAI (also reviewing on behalf of the Department of Recreation & Parks) ["R&P"]; Vishnu Desai (PAI – Development Plans Review), also reviewing for the Department of Public Works ("DPW"); Brad Knatz (PAI - Real Estate Compliance); Gary Hucik (PAI - Office of Zoning Review); Jeff Livingston (Department of Environmental Protection & Sustainability – "DEPS"), and Lloyd Moxley (Department of Planning ["DOP"]).

Each County agency representative indicated that the Plan addressed all comments submitted by their agency, and they each recommended approval of the Plan. Jim Hermann confirmed that the schematic landscape plan (County Exhibit 1) was approved and noted that the open space provided by the Developer significantly exceeded that which was required by the regulations. Mr. Desai stated that the Developer had submitted a flood plain study, and the Director of DPW had determined no further relief was necessary (County Exhibit 2B). In

addition, he noted that DPW had approved waiver requests as to road widths, sidewalks and grinder pumps, and that the Developer's Traffic Impact Analysis ("TIA") was also approved. It should also be noted that the Maryland Department of Transportation, State Highway Administration ("SHA") comment was also placed in the record, confirming that it had also reviewed the TIA and found it to be acceptable. Based upon the above waivers and submissions, Mr. Desai concluded that all applicable standards had been met and recommended approval of the Plan.

Mr. Knatz and Mr. Hucik testified that they had reviewed the Plan and on behalf of their departments recommended approval of the Developer's Plan as set out in Developer's Exhibit 1. Mr. Livingston testified that he had reviewed the project's stormwater management plan and recommended its approval. However, he noted that notwithstanding other approvals, the project will still need approval of an Application for Growth Allocation pursuant to BCC § 32-9-106.

Lloyd Moxley testified on behalf of DOP. He noted that the County Council in its resolution had approved modification as to density for the project. He further stated that the project met compatibility standards as set out in BCC § 32-4-402 and that all negative impacts had been mitigated. He stated that it had been determined that the Developer's request for modification of standards were necessary to achieve a compatible site design in relation to critical areas; and that is well the result would be a development of "higher quality" than by standard development. He advised that his department recommended approval of the requested modification of standards. He introduced written confirmation that the Baltimore County Planning Board, pursuant to BCC § 32-4-232 and BCC Title 2, had approved a variation of standards on July 18, 2019 (County Exhibit 5 noted earlier).

Mr. Moxley testified that the Plan satisfied the regulations as regards school capacity and introduced the required School Impact Analysis (“SIA”) [County Exhibit 4]. He noted that under current and projected school population figures both Sparrows Point Middle School and Sparrows Point High School would be at 115% and 118% respectively above the permitted 115% School Rated Capacity (“SRC”). However, he explained that the regulations set out in BCC § 32-4-103(F)(3). Those requirements were satisfied by showing that there is sufficient spare capacity in adjacent school districts (at both the middle and high school levels) to absorb the additional students. He stated that additional pupil space was available in adjacent Deep Creek, Dundalk and Middle River Middle Schools as well as Chesapeake, Dundalk, and Patapsco Schools. In response to questioning, he related that Sparrows Point Middle School will be one (1) student over permitted capacity and Sparrows Point High School will be 34 students over permitted capacity; with the adjacent middle schools having an additional 1,143 seats and the adjacent high schools 229 additional seats.

Based upon all of the above, Mr. Moxley concluded by stating that the DOP recommenced approval of the proposed development and pattern book.

DEVELOPER’S CASE

In the “formal” portion of the case, the Developer presented several witnesses, including Ronald Belbot, Stacey A. McArthur, David S. Thaler, and Mark Keeley.

Ronald Belbot, President of the Board of Governor’s of Sparrows Point Country Club, a post he’s held for four (4) years, stated that he had been a member of the Club for many years and described the existing structures and improvements on the property; and described the various activities that regularly took place on the site.

He related the failing financial situation of the Club, the decline in membership since the Club's inception in 1953, and its heyday in those years when it was connected to Bethlehem Steel. He spoke of the decision to sell a part of the property to the present Developer and its Club's plan to make renovations and improvements to the Club. He asserted that future operations would be similar to those at present; although the golf course itself would be reduced to 18 holes and the tennis courts will be relocated away from designated critical areas.

The witness addressed the parking to be provided when the renovation of the Club is complete. He stated that he believes, based upon his experience at the facility, that the 253 parking spaces called for in the Plan would be sufficient for staff members and guests and that at present the lot is usually underutilized; and that the number of spaces requested in the Plan is significantly more than that which has been needed for the biggest affairs that have been held at the Club in the past years. Finally, he asserted that the Club in its 66 year history has not been, and after the development proposed, will not have an adverse impact on the surrounding community.

In response to a citizen question, the witness stated that the driving range would be moved back to the clubhouse area from its present location; and that the Club would remain privately owned, although residents in the new community would pay a nominal fee to use the Club's facilities.

Stacey A. McArthur, a registered landscape architect with 30 years of experience in preparing and presenting zoning and development plans in Baltimore County, was offered and accepted as an expert witness. She testified that she prepared the development plan and pattern book. She began her testimony by describing the layout of the development, including each area where different housing units are proposed, the internal road network, public facilities,

stormwater management and environmental arrangements; all of which she noted were in compliance with County regulations. She then went through the development process itself leading up to this hearing, and addressed the various limitations within which the Plan was set out.

Building on Mr. Belbot's testimony, the witness testified as to an alternative request to grant a special exception to the Club to operate, while granting the existing buildings and other improvements nonconforming status. She opined and explained how all of the requirements set out in BCZR § 502.1 were met by the project.

As to environmental issues, she confirmed that an Application for Growth Allocation had been submitted and is in process. In addition, she addressed the requested need for approval of a petition for special variance to allow the removal of 51 specimen trees, most of which line and define the golf course fairways. She noted that these trees are not part of a forest and that strict compliance with Article 33, Title 6, would cause unwarranted hardship, due to circumstances unique to the site in light of the surrounding area. She further testified that the grant of the petition will not adversely change or otherwise alter the surrounding area. She concluded by noting that this request was submitted to DEPS and was approved on June 17, 2019 (Developer's Exhibit 9).

As to the petitions for special hearing and variance concerning various setbacks, height in relation to the property lines, residential lot lines or the RC line, Ms. McArthur explained that all are internal to the property and that all external building setbacks will be respected. As such, she noted that the requests of the Developer are all as to the new improvements and boundary lines between the Club and the new community, including lot lines. She supported these requests by observing that, given the numerous surrounding industrial and commercial uses in the area and

high density residential areas, the subject property is clearly unique. She continued that complying with all existing zoning regulations would result in the Developer experiencing considerable practical difficulties (considering existing structures and environmental limitations) in the use itself; including the positioning of the new residential structures.

In answer to a number of community concerns regarding traffic flow and safety, the Developer called Mark Keeley, a certified traffic engineer, who was offered and accepted as an expert. Mr. Keeley stated that he prepared, at the request of the County, the Traffic Impact Analysis (“TIA”) for this development (Developer’s Exhibits 12 and 13). He then explained both the study and its results, concluding that even in the likelihood of the completed development and increased membership in the Club, the area intersections would all be operating at acceptable “levels of service”. In addition, he carried on a “queueing” and concluded thereby that there would be no “queues” created. In response to questions that had been raised by citizens, he explained the process getting the installation of a traffic signal or signals at a number of citizen suggested locations, and concluded that the traffic volume would not support such requests to the County. He concluded by opining that the ingress and egress from the development would not create “congestion in the roads, streets, or alleys”; and it was his opinion that, even with increased Club membership, the development and based on his analysis, would not have an adverse impact on the surrounding community.

David S. Thaler, a certified engineer and principal of D.S. Thaler & Associates, LLC, was also called as a rebuttal witness regarding the proposed use of “grinder” pumps in the development. He stated that 131 units will include such pumps, and that thousands are in use in the area. He described their operation, including warning systems if a failure occurs, and the

assurance on his part that the large “double capacity” of each unit would allow it to continue to operate properly until repair or replacement was accomplished.

Although not sworn as a witness, Conor Gilligan of Craftsmen Developers, in answer to a question raised by a community member, offered that the timetable for construction completion would depend on the pace of sales.

COMMUNITY CONCERNS

Through questioning as each County department representative and development witness testified as well as offered testimony, the community members who attended the hearing raised several concerns. The primary concern raised was whether or not and to what extent Sparrows Point Middle School and High School would experience overcrowding. These concerns included questioning which statistics were used in preparing the SIA, the use by the County of the availability of adjacent schools that were actually a greater distance away due to the geography of Sparrows Point; as well as numbers to be generated by other developments in the area which may or may not yet be completely built. To that end, a number of charts and documents were entered by the Protestants (Community Exhibits 1 and 2).

Rodney McMillian, a school board member, was concerned about these issues and described conditions, including five (5) “lunch shifts” at the affected schools. He voiced the geographic concerns regarding the use of adjacent school districts to the Sparrows Point peninsula and stated that, enrollment numbers being “dynamic” there was, he believed, an inherent breakdown between the Board of Education and the DOP. A number of the citizens present supported his testimony and focused on the effect of other developments in the area having an impact on the school numbers now and in the future.

Richard Taylor, an adjoining neighbor to the proposed site of some 30 years, voiced his appreciation of the proposed Wise Avenue setback, but was concerned about traffic and the possibility of accidents. Nancy Taylor joined in those concerns.

William Lambdin, another area resident, asked a number of questions during the County and Developer presentations. He was unhappy with the development as well as the entire process in general; acknowledging that issues remain to be determined during the Growth Allocation process.

Scott Pappas, President of the Fort Howard Community Association, asked numerous questions during the County and Developer presentations and in his own testimony joined in the concerns of the Protestants as to the issues of traffic and school overcrowding.

David Patro, Sr., President of the North Point Community Association, another longtime resident of the area, spoke of the positive effects of this and other recent developments on the area; and believed it was “good to see” the details of this new proposed development, which he believes will be “upscale”. He stated that his association is in favor of this development project, and believes that communities need to “work together” and not at odds in these types of matters. Noting the many concerns, he favors increased school construction to deal with the issue of overcrowding. He concluded that “this PUD is making it a better Dundalk”, and voiced his support and belief that the County Executive’s continuing efforts to deal with the issue of school overcrowding will ultimately improve the situation.

Baltimore County Code Requirements

The Hearing Officer can approve a PUD Development Plan only upon finding:

- (1) The proposed development meets the intent, purpose, conditions, and standards of this section;

- (2) The proposed development will conform with § 502.1.A, B, C, D, E and F of the Baltimore County Zoning Regulations and will constitute a good design, use, and layout of the proposed site;
- (3) There is a reasonable expectation that the proposed development, including development schedules contained in the PUD development plan, will be developed to the full extent of the plan;
- (4) Subject to the provisions of § 32-4-242(c)(2), the development is in compliance with § 430 of the Baltimore County Zoning Regulations; and
- (5) The PUD development plan is in conformance with the goals, objectives, and recommendations of the Master Plan, area plans, or the Department of Planning.

BCC § 32-4-245(c)(1)-(5).

In this case, the Developer presented evidence and testimony which, when coupled with the findings of the DOP's final report establishes each of these elements. The DOP indicated that the PUD Development Plan herein was in accordance with the Master Plan and that it also satisfied the Baltimore County Zoning Regulations ("BCZR") § 260 performance standards and the compatibility requirements of the BCC. Witness Ms. McArthur testified that she believed that the development would be completed to the full extent of the Plan, satisfying BCC § 32-4-245. Finally, she testified that the project satisfied the BCZR § 502 special exception requirements, complied with BCZR § 430 (governing PUDs) and met all intent and standards set forth in the BCC [including but not limited to BCC § 32-4-245(c)(1)-(5)] and the BCZR.

A PUD is required to provide a "community benefit" per BCC § 32-4-242(b)(6)(iii). The Developer provided to Baltimore County contributions totaling \$150,000.00 towards projects as

identified in County Council Resolution 23-18, and thus this requirement is satisfied. The Code also requires the ALJ to state how any approved Modification of Standards would impact surrounding uses and promote the public interest. BCC § 32-4-245(a)(3). On this issue, I am persuaded by the testimony of Ms. McArthur that the modifications will allow Developer to construct a well-designed community while providing resources for the continued operation of the Sparrows Point Country Club which is a longstanding asset in the community, a compatible site design that is sensitive to the critical area and results in a development of higher quality than that achieved by conventional development. As such, I believe the modifications would be in the public interest.

Special Exception

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Mr. Belbot's testimony and to a much greater extent that of Ms. McArthur addressed the requirements of BCZR § 502.1. I found their testimony (and that of Mr. Keeley) uncontradicted and convincing. Moreover, the new "reality" of the Club, although the existing structures and improvements to remain there are certainly amenable to status as nonconforming, the future of that entity would be best served if it were established going forward as a special exception use. I shall so find.

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).

Testimony reveals that the area surrounding the proposed development contains industrial, commercial, and high density residential uses of varying sizes and shapes. As such, the large tract containing the proposed development is clearly unique. It is also clear from the testimony that if the regulations were strictly interpreted, the Developer would experience a considerable practical difficulty because it would be unable to construct the project shown on the redlined Plan. As to the special variance requested, testimony established that the “specimen trees” were not part of a forest and that the request for special variance for their removal was submitted to, reviewed, and approved by DEPS. Finally, I find that the variances can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. Under the testimony and evidence presented, I also find that the proposed development would not have a detrimental impact upon the surrounding communities.

Special Hearing

I am convinced by the testimony of Mr. Belbot and Ms. McArthur that the number of parking spaces requested are appropriate, given the uses of the Club and its relation to the proposed residential community.

As regards the other requests for special hearing, it was noted that the boundary line between the Club and the new residential community is yet to be established. The requested relief is wholly internal in nature. They will have no impact on surrounding or adjacent properties. I find that they are necessary for the proper implementation of the proposed Plan.

THEREFORE, IT IS ORDERED by this Hearing Officer/Administrative Law Judge this **17th** day of **October, 2019**, that the Development Plan identified herein as COUNTRY CLUB ESTATES PUD (Sparrows Point Country Club) [Developer's Exhibits 1A-1F], be and is hereby **APPROVED**.

IT IS FURTHER ORDERED that the Petition for Special Hearing, pursuant to BCZR § 104 for continuation of the nonconforming use of the country club/golf course with a 25% increase, be and is hereby **DISMISSED WITHOUT PREJUDICE AS MOOT**.

IT IS FURTHER ORDERED that the Petition for Special Hearing, pursuant to BCZR § 104 to approve the nonconforming status of any existing buildings and parking facilities to remain, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Special Hearing, pursuant to BCZR § 409.6.A to approve the provision of 253 parking spaces for the country club/golf course, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Special Hearing, pursuant to BCZR § 406.A.3 to approve the location of the tennis and sport courts, less than 100 ft. from the proposed RC zoned property boundary line for club but more than 100 ft. from the boundary of the closest proposed residential lot line, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Special Exception, pursuant to BCZR §§ 1B01.1.C.4 and 1A05.2.D.8 for approval of a country club/golf course within the DR 1, DR

5.5 and RC 20 zoned portions of the property, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance, pursuant to BCZR § 233.1.B, to allow parking facilities on the BM zoned portion of the property to be located as close as 28 ft. to the proposed property boundary line in lieu of the required 60 ft. setback, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance, pursuant to BCZR § 235.C.1, to allow a building height of 45 ft. in lieu of the maximum height of 35 ft. permitted on the BM zoned portion of the property within 750 ft. of an RC zone, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance, pursuant to BCZR § 409.8.A.1, to waive the requirements of the Baltimore County Landscape Manual for parking facilities associated with the country club/golf course, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Special Variance to remove/impact 51 specimen trees on the subject property, be and is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Developer may apply for necessary permits and/or licenses upon receipt of this Order. However, Developer is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Developer would be required to return the subject property to its original condition.
- Developer shall obtain approval of an Application for Growth Allocation pursuant to BCC § 32-9-106.

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

Signed
LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS/dlw