



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

January 26, 2022

Jason Vettori, Esq. – jvettori@sgs-law.com
David Gildea, Esq. – dgildea@sgs-law.com

RE: **AMENDED ORDER** - Development Plan and Zoning
Project: Southern Crossroads
Address: 4100 Maple Avenue
PAI Case No: 13-0239

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink that reads "Maureen E. Murphy".

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm
Attachment

c: *See Email Addresses Next Page*

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IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
13 th Election District		
1st Council District	*	ADMINISTRATIVE HEARINGS
(4100 Maple Avenue)		
	*	FOR
SOUTHERN CROSSROADS	*	BALTIMORE COUNTY
ROCK REALTY, LLC	*	CASE NO. 13-0239
<i>Owner/Applicant</i>		

* * * * *

**AMENDED ADMINISTRATIVE LAW JUDGE’S (“ALJ”)
DEVELOPMENT PLAN OPINION & ORDER**

This matter came before the Office of Administrative Hearings (“OAH”) for a public hearing on a development proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code (“BCC”). Rock Realty, LLC Owner/Applicant (herein known as “Developer”) submitted for approval a 14-sheet Blacklined Development Plan (the “Blacklined Development Plan”), which incorporated all the changes made on both a Redlined Development Plan, and a Bluelined Development Plan (collectively referred to as the “Development Plan”), all of which were prepared by Bohler Engineering for the development project known as “Southern Crossroads”.

The Developer proposes a Phase I residential development (“Phase I”) of 182 townhouse units with 74 single-car garage units and 108 double-car garage units, located within the DR 5.5 portion of a 71.98 acre +/- property, at the address of 4100 Maple Avenue, Halethorpe (the “Property”). The Phase II portion of the development (“Phase II”) which is intended in the Business, Roadside (BR) and Manufacturing, light (ML) zones, was not part of the approval herein. The Property was posted with the Notice of Hearing Officer’s Hearing (“HOH”) on June 24, 2021 and was re-photographed on July 8, 2021 in compliance with the regulations. Due to the

COVID-19 pandemic, the undersigned conducted a public virtual WebEx hearing in lieu of an in-person public hearing on the following dates: July 23, 2021, September 23, 2021, September 24, 2021, December 1, 2021, December 2, 2021 and December 3, 2021.

Appearing at the public hearing on behalf of the Developer was Mark Levy and James Fraser of Rock Realty, LLC. Also appearing was Brandon Rowe, PE with Bohler Engineering, Christopher Jakubiak, Mickey Cornelius of The Traffic Group, John Canoles with EcoScience Professionals, and Carl Richards, former Chief of Office of Zoning Review. David Gildea, Esquire and Jason Vettori, Esquire with Schmidt, Gildea & Smith, appeared and represented the Developer.

Appearing on behalf of the Halethorpe Improvement Association (“HIA”) was Michael McAuliffe and Bill Carter, Vice President. Otis Collins appeared on behalf of the Halethorpe Civic League but did not participate. Appearing individually on each day of hearings were Casey Jackson, Tiffany Wiseman, and Cheryl Reidel. The record will reflect that there were many community members who also participated by asking questions and/or testifying.

AGENCY WITNESSES

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, Approvals and Inspections (“PAI”): Jerry Chen, Project Manager; Jim Hermann, Baltimore County Landscape Architect; Michael Viscarra for Development Plans Review (“DPR”); Brad Knatz from Real Estate Compliance; and Gary Hucik from Office of Zoning Review (“OZR”). Also appearing on behalf of the County were Stephen Ford and Jeff Livingston from the Department of Environmental Protection and Sustainability (“DEPS”); and Jenifer Nugent and Brett Williams from the Department of Planning (“DOP”).

On Day 1 of the hearing, July 23, 2021, the Developer requested a postponement on the

record because the Development Plan had not been reviewed by all County agencies. Mr. Chen indicated that a County agency meeting was held within days of the July 23rd hearing and that late submissions were received from the Developer. In particular, DPR was not provided the redlined development plan in time to review it, and the DPC comments dated June 29, 2021 had not been addressed. (County Ex. 10). Similarly, DEPS was given the Redlined Development Plan too late to provide comments. As a result, the case was postponed and no testimony was taken.

On Day 2 of the hearing, September 23, 2021, the Development Plan was submitted to both DPR and DEPS within 1-2 days before the hearing. As a result, neither agency was able to review it and provide comments. On Day 3 of the hearing, September 24, 2021, Michael Viscarra of DPR testified that he reviewed Development Plan dated September 21, 2021, but was not able to recommend approval on that date because there were many changes from a prior version of the Development Plan, still leaving unresolved, outstanding issues including, storm drains, drainage and utility easements, retaining wall elevations, site distance lines not shown, as well as dimensions and parking for a T-turn-around lane.

Finally, on Day 4 of the hearing, December 1, 2021, Michael Viscarra testified that all of the outstanding issues had been resolved to the satisfaction of DPR. On November 9, 2021, DPR recommended approval of the Bluelined and Blacklined Development Plan. Mr. Viscarra's signature appears on the Bluelined Development Plan (Dev. Ex. 38) and on a Transmittal Letter dated November 9, 2021. (County Ex. 11; Dev. Ex. 37). When questioned, Mr. Viscarra indicated that the most significant issue was the outfall for the drainage and utility easement as the outfall was previously going through a retaining wall. The Developer addressed that issue by reconfiguring the retaining wall. Mr. Viscarra testified that he received confirmation from the Department of Public Works & Transportation ("DPW&T") that the 8-inch pipe will provide

adequate sewer capacity. He explained that the County also factors into its approval all storm water runoff generated offsite or upstream and flowing onto the Property. DPW&T considers all complaint-driven flooding issues prior to giving its approval.

Gary Hucik of OZR testified that, on September 17, 2021, he received the Redlined Development Plan. Notwithstanding this late submission, Mr. Hucik explained that OZR's concerns were setbacks and density as set forth in the OZR Comment from the Development Plan Conference ("DPC") dated June 30, 2021 (County Ex. 1). Referring to the rear loaded townhomes, the Developer used 'traditional' parking requirements for the townhomes using the centerline of the proposed 16 ft. - wide alley, as the rear property line in order to meet the 30 ft. setback. Mr. Hucik stated that by using the centerline of the alley, Developer is providing a 16 ft. use-in-common easement for public travel (Note 56 on the Blacklined Development Plan) which cannot be impeded or blocked by future owners of the townhomes. Because an easement is provided, no variances will be needed. He also required that a note be added to the Redlined Development Plan to maintain 500 sf private yard space (25 ft. length x 20 ft. wide rear yards = 500 sf) per the Comprehensive Manual of Development Manual ("CMDP"). Mr. Hucik agreed that the setback here will be exceeded by 3 ft. (a 25 ft. long rear yard, plus the additional 8 ft. to the centerline of the alley, is a 33 ft. setback). Mr. Hucik approved the front yard setback of 10 ft. for townhomes with parallel parking in the front pursuant to BCZR, §1B01.2.C.1.c. With regard to the density calculation, he agreed that a maximum density of 252 units is permitted for the 46 acres of DR 5.5 zoned land.

Mr. Hermann, the Baltimore County Landscape Architect, testified on behalf of DPR in regard to the Schematic Landscape Plan, and on behalf of Recreation & Parks (R&P) in regard to Local Open Space ("LOS") and Master Plan Greenways. Mr. Hermann testified that he received

the Schematic Landscape Plan on the morning of the September 23, 2021 hearing. (County Ex. 2). As reflected on the Schematic Landscape Plan, the project slightly exceeds the required number of plantings at 688.9 in accordance with the Baltimore County Landscape Manual. The Schematic Landscape Plan shows landscape strips with tree plantings along Maple Ave. and in Final Landscape Plan phase, he will review the requirement for additional landscape strips.

With regard to LOS requirements, he reviewed the Bluelined Development Plan and stated that for the 182 proposed units, the LOS is 182,000 sf or 4.107 acres (1,000 sf per unit) and the project exceeds the required amount by providing 196,364 sf or 4.5 acres. The LOS shown is in 4 separate areas which is compliant with BCC, §32-6-108 as there is no requirement for it to be centrally located or connected. (Dev. Ex. 44). Additionally, he added that the Bluelined Development Plan also shows amenities are being provided including: a playground, benches, tables, Bluebird boxes, dog receptacles, bike racks, and an asphalt trail at an estimated cost of \$194,050.00. (County Ex. 9). Mr. Herman opined that these proposed amenities meet the requirements of BCC, §32-6-108(a)(2) and (d). Mr. Hermann responded to extensive questions by the HIA, and by Protestants Casey Jackson, and Tiffany Wiseman.

Brad Knatz, Real Estate Compliance (“REC”), testified that the public dedications to the County matched the Dedication Table on the Redlined Development Plan dated September 17, 2021. The Developer met each of the DPC Comments dated June 30, 2021 from REC. (County Ex. 3). As a result, REC recommended approval.

Steve Ford from DEPS testified on behalf of Ground Water Management (“GWM”), Storm Water Management (“SWM”) and Environmental Impact Review (“EIR”). Mr. Ford testified that since the Property will be served by public water and sewer, GWM had no comments. (County Ex. 12). Given that Redlined Development Plan was provided 2 days prior to the September 23,

2021 hearing, neither SWM nor EIR had time to review it.

As a result, on Day 4 (December 1, 2021), Jeff Livingston, Development Coordinator, testified on behalf of SWM and EIR. In regard to SWM, Mr. Livingston testified that SWM approved the Bluelined Development Plan as of November 17, 2021. (County Ex. 13). On November 24, 2021, DEPS received a Blacklined Development Plan. (Dev. Ex. 45). Mr. Livingston acknowledged that it incorporated the final changes requested by SWM. He noted that the Developer had obtained Concept SWM plan approval prior to Day 1 of the hearing but elected to help with the neighborhood's concern for flooding. This resulted in changes to both SWM locations to incorporate additional design components and make the SWM facilities larger, thereby slowing the release of water.

EIR also approved the Blacklined Development Plan on November 24, 2021. (County Ex. 19). By way of background and as indicated on the EIR DPC Comments dated June 30, 2021, the initial Forest Buffer and Forest Conservation Variances were denied. (County Ex. 14). EIR had requested to eliminate 10-14 homes in the northern part of the Property in order to minimize environmental impacts and to consolidate the development area toward Rt. 1. EIR approved the Alternative Analysis by letter dated October 14, 2021 which included the proposed paved trails within the Forest Buffer area. (County Ex. 17). Additionally, the request to remove 51 specimen trees (originally 89 trees) from the entire Property was recommended for approval by letter dated October 14, 2021. (County Ex. 16). A correction to the Forest Conservation Plan as to the number of specimen trees was approved by letter dated October 15, 2021. (County Ex. 18).

Although he could not provide the statutory reference, Mr. Livingston testified that Title 33 requires DEPS to apply the Forest Buffer and Forest Conservation regulations to the entire Property in order to consider all phases of development. This interpretation is based on the absence

of language in the BCC stating that the Forest Buffer and Forest Conservation regulations may be applied to individual phases. He acknowledged that EIR does not have a written policy requiring an application of these regulations to the entire property. Mr. Livingston stated that this is a: “longstanding battle between attorneys and EIR about how [to] interpret code.” Conversely, he noted then qualified that if the Property consists of several ‘parcels’ then only those parcels being developed would be considered by DEPS under the regulations. As for the absence of a Phase II development plan, DEPS was satisfied with conceptual building outlines on the BR zone and preliminary future road outlines in the ML zone.

With regard to specimen trees requested to be removed, Mr. Livingston explained that the Forest Conservation Variance approval was part of a cumulative settlement with the Developer to preserve, in perpetuity, forested areas via recordation of Forest Conservation Easements. Given that the Developer agreed to nearly double its Forest Conservation obligation, the specimen trees in both Phase I and Phase II were approved for removal.

Brett Williams testified on behalf of DOP who reviewed the Redlined Development Plan for compliance with Master Plan 2020, Baltimore County Zoning Regulations (“BCZR”), Comprehensive Manual of Development Policies (“CMDP”) and the Southwest Baltimore County Revitalization Strategy. Mr. Williams authenticated the following DOP documents which he prepared: the DOP DPC Report dated June 30, 2021 (County Ex. 4); the DOP Hearing Officer Hearing Report dated July 23, 2021 (County Ex. 5); an Amended DOP DPC Report dated September 9, 2021 (County Ex. 6); an Amended Final Hearing Officer’s Hearing Report (County Ex.7); and the DOP Updated School Impact Analysis (“SIA”) dated September 24, 2021 (County Ex. 8). He testified that the DOP reviewed and approved the Developer’s Compatibility Report dated August 25, 2021. (Dev. Ex. 25). On July 15, 2021, a SIA was submitted when 196 homes

were being proposed which resulted in full-time school enrollment less than the 115% State Rated Capacity (SRC). Mr. Williams added that when the number of homes was reduced to 182 units, an updated SIA was submitted by the Developer on September 21, 2021 but due to this late submission, DOP was not able to verify the updated calculations by the time of the hearing. Subsequent to the hearing, DOP provided an updated SIA which confirms that the full time enrollment for each school dropped even further below the SRC of 115%. (County Ex. 8). As such, he concluded that the area schools will not be negatively impacted by this project.

In regard to Residential Performance Standards under BCZR, §260, an updated Pattern Book was submitted on September 21, 2021 and DOP recommended approval. (Dev. Ex. 35). In summary, all outstanding issues have been resolved to the satisfaction of DOP. Mr. Williams was asked questions of HIA, Protestant Shannon Fren, Casey Jackson and Tiffany Wiseman.

DEVELOPER'S CASE

The Developer's first witness was Christopher Jakubiak who was accepted as an expert in planning, in BCZR, in Baltimore County Development Regulations, with specialty expertise in the Baltimore County Master Plan and on compatibility. (Dev. Ex. 14). Mr. Jakubiak testified that the Halethorpe community originated from 2 farms which were divided into lots ranging in size from 6,200 sf to 7,500 sf. He explained that Halethorpe has a variety of residential housing types from larger estates to modest sized houses, with a mix of uses from industrial to commercial. He explained that, in some areas, the neighborhood does have sidewalks. Importantly, he noted the neighborhood surrounding the Property is within a hub of major transportation connection routes and it is defined by I-95, I-895, I-195, and I-695. It is ideal for redevelopment of housing as it is located next to the Marc and Amtrak train stations. The Property is within the Urban Rural Demarcation Line ("URDL") and is consistent with the Master Plan 2020. In Master Plan 2020,

this Property is designated in a T-4 transect zone which is relegated to urban properties with dense residential housing types, such as townhouses. (Dev. Ex. 13). The Property also lies within a Community Conservation Area which the County has designated as an area for both public and private investment of development projects. Its location near a regional transit stop provides for walkability from the neighborhood and the availability of public transportation.

In regard to the compatibility of the project with the existing neighborhood under BCC, §32-4-402, Mr. Jakubiak prepared a Compatibility Report dated August 31, 2021. (Dev. Ex. 25). Within that Compatibility Report, he delineated the ‘neighborhood’ as defined in BCC, 32-4-402(a). He applied the 8 factors for compatibility and opined that it met each of those factors.

In regard to arrangement and orientation of proposed buildings (objective 1), he explained that they are patterned in a similar manner to those in the neighborhood. Using the updated Pattern Book, Mr. Jakubiak opined that the proposed townhomes are built on a grid pattern which, when overlayed onto the existing homes in the neighborhood, show similar arrangement and orientation toward the streets. (Dev. Ex. 35). He testified that objective (2) was satisfied in that, rather than designing a townhouse community with a central parking lot, or several parking lots, the existing neighborhood street parking was used as a model. In relation to sidewalks and roads within Halethorpe, both neighborhoods will be connected by the addition of the proposed sidewalks and trail. He stated that objective 3 is met by the extension of Maple Avenue into the proposed development.

In regard to open spaces of the proposed development (objective [4]) in comparison to the open space patterns of the Halethorpe neighborhood, Mr. Jakubiak opined that Halethorpe does not have a pattern of open spaces because it was built over time without a central green space. The proposed development, on the other hand, will have elements of open space such as the

forested hillside which will run the perimeter of Property as shown on the aerial photo in the Pattern Book. (Dev. Ex. 35). The proposed tot lot on Maple Avenue is centrally located. By comparison, the Veteran Memorial Park is located on Selma Ave. and Ridge Avenue and is similar in size to the proposed tot lot and wooded with green space.

In his opinion, objective 5 was satisfied by integrating the view from tot-lot to downtown Baltimore into the site design. Mr. Jakubiak emphasized that this Property is redevelopment so it does not have a lot of natural features. In regard to objective 6, he stated that Halethorpe does not have a unified landscape design, no standard line of street trees, or parks or traffic circles. The existing neighborhood has some areas where design elements are used to separate the public areas from private areas. Toward that end, the project will have street trees and will use fences and hedges to separate the public roads from the private homes.

Mr. Jakubiak testified that there is no standard street lighting in Halethorpe. Within the development, he stated that lighting, signs and accessory structures supporting a uniform theme will be present (objective 7). The proposed lighting will have street lights which meet the regulations. The proposed sign will be within a green space without any negative impact on the community.

In regard to objective (8) scale, proportion, massing and detailing of the townhomes as compared to the detached single family homes in Halethorpe, Mr. Jakubiak testified that compatibility does not mean sameness or similarity; it means 'a good fit' within a broader neighborhood. He described the project as a harmonious development which will not cause adverse conditions. He mentioned that 'scale' is the size of something relative to a point of reference but cannot be considered in an abstract box. In this case, the townhouse block is segmented into identifiable units using proportion of building and design elements such as

windows, dormers, front doors, garage doors, materials to break down size/mass into a residential character. He stated that 'proportion' is the relationship between various elements on a building. By way of example, Mr. Jakubiak described how a large pole barn without residential features would not be compatible with a single family home. He noted that 'details' of the post-war Halethorpe homes such as vertical windows, the central focus on the front door, the roof line, and walkways leading up to the front door will also be found on the proposed townhomes.

On cross examination by HIA, he testified some single family homes within Halethorpe are on very narrow lots; some as close as 10 ft. Mr. Jakubiak did not find that the proposed townhomes had a 'wall' effect. He opined that the addition of 182 townhomes will not adversely affect safety of Halethorpe residents.

The Developer's second witness was Mark Levy, President of H&H Rock Company and the Manager of related entities which purchased the Property in 2019. Mr. Levy testified that he has been in the development business for 38 years, having developed both residential communities and business parks. He has developed 1,000 of lots and hundreds of communities. His company has built many development projects along US Rt.1. He emphasized that this is a redevelopment of obsolete, asbestos-contaminated, buildings which have become vacant and are an attractive nuisance to the neighborhood. He previously explored other options to reuse the buildings for a school. In regard to ingress and egress, he testified that the only existing access road into the Property is Maple Avenue; there is currently no access into the Property from US Rt.1. The Development team looked into creating access from Sulphur Spring Rd. However, due to grades and environmental constraints, that access is not possible. Mr. Levy made clear in his direct testimony that the future development of the BR or ML zoned areas are not part of this development plan approval. He emphasized that there are only 182 residential units being

approved at this time; he has no plans to build a hotel or a convenience store along Rt. 1 in Phase II. On cross examination, in regard to future development (approx. 12-14 acres), he intends to explore all options at the appropriate time, including more residential uses and/or commercial.

Mr. Levy stated that he wants to build a community that is compatible with Halethorpe and there is a need for family housing in the area. Mr. Levy indicated that he has met with Michael McAuliffe several times as well as other property owners. Having reviewed the written comments from the Halethorpe community, 2 significant changes were made to the Development Plan: (1) the number of units was reduced from 196 to 182 units on the northern side of the Property; and (2) additional SWM devices were designed.

Mr. Levy responded to six (6) areas of concern expressed by the community: (1) he believes that traffic will be improved with the new access onto Rt. 1; (2) schools will not be overcrowded because enrollment is further reduced with 182 units; (3) onsite SWM has now been increased and improved above what is legally required and will now handle 2-10 year storms; (4) offsite SWM concerns and flooding has not been addressed by the County for decades; (5) compatibility of the townhomes with the Halethorpe neighborhood exists; and (6) lack of sidewalks in Halethorpe is another issue which has not been addressed by the County. Mr. Levy offered to work with the community and the County about the issues of sidewalks and traffic calming measures. He articulated that Summit Avenue has a 10 ft. easement where sidewalks could be installed but doing so would require the consent of those property owners.

With regard to Open Space #1 and the proposed trail next to Tiffany Wiseman's property, Mr. Levy stated that a fence will be installed to separate the trail from her home. He testified that the trail will be paved because tar and chip is not optimal.

Carl Richards, former OZR Supervisor for 29 years of his 54 years with Baltimore County,

was admitted as an expert in the BCZR. In regard to Mr. Hucik's testimony of the required front yard setback for townhomes with parallel parking, Mr. Richards opined that the front yard setback is not 15 ft. as written by Mr. Hucik in the OZR DPC Comment, but rather 10 ft. as set forth in BCZR, §1B01.2.C.1.c. where it lists a 10 ft. setback for traditional group homes. He elaborated that the OZR has interpreted the term 'traditional townhome' as one with parallel parking in the front with alley access in the rear. Mr. Richards explained that while BCZR, §1B01.2.C.1 refers the reader to the CMDP. In light of the text and illustrations found in the CMDP for attached homes, the OZR has interpreted a 'traditional' townhome as an older style townhome with an alley in the rear and parallel parking in front. He stated that examples of these can be found on the eastern side of the County.

In regard to the rear yard setback of 30 ft. in the DPC OZR Comment, Mr. Richard agreed that the 25 ft. rear yard area plus an additional 8 ft. to the centerline of the alley exceeds the 30 ft. required setback. The rear-loaded townhomes here also comply with the CMDP required 500 sf (20 ft. x 25 ft.) area. As such, Mr. Richards opined that no variances are needed for this project. The Development Plan meets all zoning setbacks and dimensions.

Mickey Cornelius was admitted as an expert witness in traffic engineering with expertise in traffic impact studies. (Dev. Ex. 8). Mr. Cornelius is Senior Vice President for Traffic Group, where his duties involve conducting traffic engineering studies and design of roadways. He prepared a Traffic Impact Study ("TIS") (Dev. Ex. 9). Traffic Group collected existing traffic volume information, projected future traffic volume from other approved developments, and then calculated the additional traffic from the proposed project using a capacity analysis and critical lane volume technique. He noted that this is used by both State Highway Administration ("SHA") and the County to predict future traffic. In this case, he also conducted a detailed analysis using

the Highway Capacity Manual as well as traffic simulation using simulation software.

Upon review of the TIA, Traffic Division of DPR responded that there will be minimal impacts to existing intersections and County roads from this development. (Dev. Ex. 29). The primary State arterial road is Washington Blvd. (US Rt. 1), which has a 40 mph speed limit with 2 lanes in each direction and turn lanes at major intersections. Ten (10) intersections were studied along Washington Blvd. plus the intersections for I-695, Ridge Ave. and some north of I-695. (Dev. Ex. 9). Sulphur Spring Rd. runs east/west and is a County collector road with a 35 mph speed limit. Maple Ave. is a local residential road.

Mr. Cornelius opined that the proposed development can be accommodated with existing roads. The TIS showed that 90% trips generated from new development are projected to use the new access to Washington Blvd. The SHA requested improvements to Washington Blvd which will include: (1) a southbound deceleration lane (right-turn in; approx. 12 ft. wide); and (2) a striped, northbound left turn lane (left-turn into site; 10 ft. widening). A bicycle lane will also be required near the deceleration lane. This new intersection will provide direct entrance onto Washington Blvd. (US Rt. 1) which is a major arterial road. Before access permits are provided by SHA, the dimensions for all road-widening will be provided in the final construction drawings.

Maple Avenue is required to be left open as a second means of access because there are more than 100 units being proposed. However, only 10% of traffic is projected to use Maple Avenue because Avalon Ridge Blvd. provides direct access to Washington Blvd. which is a more efficient route to major connections and/or roadways. All signalized intersections operate at a 'C' or better level of service (which is acceptable) and the TIS projects the same level of service for the proposed development. Both the County and SHA agree with the TIS conclusion that all intersections will perform at acceptable levels of service. (Dev. Ex. 20, 30, 31).

Mr. Cornelius opined that this project will not adversely impact the roads, streets or alleys based on the fact that the intersections operate at acceptable levels of service and will continue to do so with the proposed development. This opinion was also supported by both the State and County reviewers. Access cannot be extended to Sulphur Spring Rd due to the grade differential which is over 100 ft. as well as environmental features at that location.

On cross examination, Mr. Cornelius testified that the number of trips from the initial development of 196 units, was 90 trips (7-9 am) and 108 trips (4-6 pm). All roadway widening will occur on existing right-of-ways and not on individual properties. For all Phase II development, Mr. Cornelius stated that a new TIS would be required by the State and County and a traffic signal may be required at Avalon Ridge Blvd. All roads within the new community except for the alleys will be public roads and maintained by the County. The traffic counts were collected in 2018 and 2019 during 2, weekday peak hours (prior to Covid pandemic), and therefore these are the best traffic counts available and accepted by all jurisdictions within the State. All traffic counts were included in Appendix A of the TIS and were conducted while Baltimore County Schools were in session. It was his opinion that any cut-through traffic will be from existing neighborhood through the new development to get to US Rt. 1 and beyond, not the reverse situation.

Brandon Rowe, PE with Bohler Engineering was admitted as an expert in engineering, land use, and development. (Dev. Ex. 6). In 2019, Bohler conducted feasibility studies, prepared the Concept Plan, attended the Community Input Meeting (“CIM”) and prepared and sealed each of the development plans (Redlined, Bluelined and Blacklined). Bohler also prepared the Pattern Book dated September 20, 2021 which was submitted to DOP and R&P. (Dev. Ex. 35). In describing the Property, he noted the existing buildings are situated at the top of the hill which

then falls away in all directions with elevation changes of 100 ft. in some areas. The gross acreage is 71.98.

It is split-zoned into 4 zoning districts: Density Residential (DR 5.5 - 45.86 acres); Business, Roadside (BR -13.66 acres); Manufacturing, Light (ML-12.39 acres); and Density Residential (DR 2 - 0.07 acres). (Dev. Ex. 44, 45). The DR 5.5 total acreage permits 252 residential units by right. Initially 196 units were proposed, but due to additional SWM devices, and DEPS' insistence on preserving larger environmental features, the number of units was reduced to 182. The Property is not a single lot of record; it consists of three (3) separate parcels which is shown in Pattern Book by orange lines. (Dev. Ex. 35, p. 7). Each of the three (3) parcels is split-zoned. The DR 5.5 zoned area spans all 3 parcels.

After the initial development plan was submitted in May of 2021, and after DPC was scheduled, changes were made to provide quantity SWM devices (for larger storm events). These additional SWM devices required substantial changes and were reflected on the Redlined Development Plan. In May of 2021, the Developer met with some members of the community regarding their SWM concerns. Despite having received Concept SWM approval prior to the DPC on June 30, 2021, Mr. Rowe added that Redlined Development Plan was filed in September, 2021. After that filing, Mr. Rowe worked on the Bluelined changes to the SWM plan. The latest revisions to the Bluelined Development Plan is dated November 24, 2021. He confirmed the Blacklined Development Plan dated November 23, 2021 and filed on November 24, 2021, is the clean version which compiles all Redlined and Bluelined changes. It reflects the latest EIR written comments dated November 24, 2021. (County Ex. 19; Dev. Ex. 43).

Mr. Rowe explained that the Property is located within the Patapsco River Watershed and as a result, does not require quantity SWM, only quality SWM devices. While Concept SWM

approval had already been obtained, after the May on-site meeting, and after hearing the community concerns for flooding, the Developer, in conjunction with DEPS, agreed to provide the additional quantity SWM devices to management 10-100 year storms. The additional quantity SWM devices will hold water back and slow it down, in addition to the cleaning the water. The revised SWM Plans were then submitted to DEPS in early July, 2021.

A SWM Report outlining the calculations was prepared and filed with the County. (Dev. Ex. 47). At that point, DEPS expressed the need for even more quantity devices with larger SWM facilities and an Addendum Report was filed to support the further expansion of the devices. (Dev. Ex. 48). The Concept SWM plan was revised and was ultimately approved by DEPS on November 24, 2021. (Dev. Ex. 46). The County SWM section approved the revised Concept SWM Plan by way of transmittal letter dated November 17, 2021. (Dev. Ex. 36).

Mr. Rowe opined that because quality and quantity SWM devices will be constructed, there will not be additional water leaving the Property after the development is built; water will leave the Property at the same or lesser extent than it does today. The proposed development will connect to existing public water system along US Rt. 1 and on Maple Avenue; the sewer system will connect to Maple Ave (to serve 37 units) and the sewer connection for the remaining 145 units on to US Rt. 1. He opined that the Property is not located within any failing transportation, water or sewer sheds on the County Basic Services Map. Accordingly, he stated that adequate sewer capacity existed for the 196 units and therefore can support 182 units.

In the feasibility phase of the case, Bohler looked at environmental constraints in conjunction with the bulk regulations to determine potential development uses. Mr. Rowe stated that the Property has streams, forests and buffers which surround the slopes from the plateaued area on top. An above-ground SWM device was originally designed to be placed within the

environmental areas in the northern portion of the Property. Based on DEPS' request to reduce the number of specimen trees to be removed in the northern portion, that SWM device (a concrete vault) was moved under-ground.

Mr. Rowe testified that there will be 36.667 acres of Forest Conservation Easements and 24.5 Forest Buffer easements which will be protected in perpetuity. These easements will control all present and future phases of development. Forest Conservation Plan approval was received by DEPS on October 15, 2021. (Dev. Ex. 39). Forest Conservation Variance approval was obtained on October 14, 2021 (Dev. Ex. 40). Forest Buffer Variance and Alternatives Analysis were both approved on October 14, 2021. (Dev. Ex. 41, 42).

Mr. Rowe testified all proposed public streets within the development project will be 2-way streets with 24 ft. paving, within a 50 ft. right-of-way and all 16 ft. wide alleys are privately owned. Mr. Rowe opined that all of the proposed roads and alleys meet all County rules and regulations. As described in the County Design Manual, a public alley is one which is a fee simple right-of way is dedicated to the County by recordation in Land Records; a private alley is a use-in-common easement, the land under which is still owned by abutting property owners. As with Mr. Cornelius, he opined that there must be 2 vehicular access points to the development because the number of units is more than 100. There was no option to access Sulphur Spring Rd. due to the drop in grade and impact to environmental streams and buffers.

He explained that a SIA is required to be prepared by the Developer and then is subsequently reviewed by DOP. It was Mr. Rowe's opinion that the development plan must be granted unless the development is projected to generate additional enrollment exceeds 115% of the net State Rated Capacity ("SRC"). If the additional enrollment exceeds 115% of the SRC, the school is legally considered to be 'overcrowded'. The pupil counts are provided by the County

through September 30th of each year. In this case, he confirmed that the projected enrollment for this development does not exceed 115% net SRC and therefore each of the schools will still be 'undercapacity'. (Dev. Ex. 32).

Mr. Rowe highlighted that the Schematic Landscape Plan was approved by the County Architect and is contained within the Blacklined Development Plan. (Dev. Ex. 45). The Final Landscape Plan will include the planting of native species. A cost estimate for Open Space Amenities was provided in the amount of \$194,050.00. (County Ex. 9). The Pattern Book provides the amenity details with contextual photos and an illustrative site plan, sign location, fencing, retaining wall and building elevations. (Dev. Ex. 35).

In explaining the many versions of the Development Plan, Mr. Roe testified that the Redlined Development Plan included the initial SWM revisions to provide the quantity SWM devices as well as DPC comments up to Revision 4, which incorporated a comment from R&P. The Bluelined Development Plan includes Revisions 5-8. R&P then requested changes 5 and 6 to LOS. Revision 7 addressed DPR Comments and Revision 8 was for the final DEPS' Comment. LOS is shown in both red and blue and initially proposed a dog park in southern end as well as a large, flat LOS for more active approach. Because the Community objected to the dog park, it was eliminated. DEPS, R&P, and DOP rejected the flat, larger LOS because it required grading and removal of specimen trees. In its place, natural forested areas with specimen trees and trails was accepted. DOP requested a tot-lot at end of Maple Ave. to be the focal point. The end result was the LOS as it appears in the updated Pattern Book dated September 20, 2021. (Dev. Ex. 35. p. 62). DEPS approved the Blacklined Development on November 24, 2021. (Dev. Ex. 43; County Ex. 19).

Mr. Rowe opined there are no unresolved comments that need to be addressed with the

Blacklined Development Plan. There are no variances, modifications of standards or waivers that are needed in this case. It was his opinion that the Blacklined Development Plan meets all regulations, policies and standards for development as required under the BCC.

The final witness for the Developer was John Canoles, a principal with EcoScience Professionals who was accepted as an expert in consulting ecology. (Dev. Ex. 54). EcoScience does field delineations of natural resources, prepares reports, and coordinates with the County for review. In 2018, he identified the forests, wetlands, and streams, buffers and forest conservation areas. He then prepared wetland delineations and forest stand delineations, flagging all the specimen trees as well as plans for steep slopes and erodible soils analysis to determine where forest buffers would be. In 2020, the County approved the original delineation plans. He also prepared a Preliminary Forest Conservation Plan (Dev. Ex. 49), a Plan to Accompany the Forest Buffer Variance Application and Alternatives Analysis. (Dev. Ex. 51).

The Forest Buffer Variance requested relief from the 35 ft. setback from the Forest Buffer for 11 lots, and for 4 other lots proposed to be built within the Forest Buffer itself was filed on September 16, 2021. (Dev. Ex. 51, 53). An Alternative Analysis dated September 16, 2021 to request approval of roads, trails, and utilities to be located within the Forest Buffer. (Dev. Ex. 52). A Forest Conservation Variance application dated October 2, 2021 was filed to request removal of the specimen trees. (Dev. Ex. 50).

The Preliminary Forest Conservation Plan (Dev. Ex. 49) was approved by letter from DEPS on October 15, 2021. (Dev. Ex. 39). The Forest Buffer Variance was approved on October 14, 2021. (Dev. Ex. 41). Alternatives Analysis was approved on October 14, 2021. (Dev. Ex. 42). Forest Conservation Variance was recommended for approval on October 14, 2021. (Dev. Ex. 40). Mr. Canoles mentioned that the environmental approvals were not obtained prior to Day 1 of

the hearing because when the SWM plan changed, the development footprint changed, resulting in a change to the environmental plans.

Mr. Canoles explained that the purpose of the 35 ft. Forest Buffer setback is to reduce encroachment by future property owners into the Forest Buffer. To approve the reduction of the 35 ft. setback, Mr. Canoles explained that the County does accept fencing, retaining walls or topographical boundaries as they are physical barriers which also prevent the future homeowners from encroaching into the Forest Buffer. As applied here, the setback reduction was warranted because there will be retaining wall to define and prevent encroachment into the buffer. In regard to the setback from the Forest Buffer for the extension of Maple Ave, he stated that the required setback was already impacted by Maple Avenue and the Alternatives Analysis showed there was no other option for the Maple Avenue extension. The Alternatives Analysis for the storm drain outfalls into the Forest Buffer was also warranted because water must be discharged into the wetlands and streams which requires the outfall to be near or in the Forest Buffer.

It was Mr. Canoles' opinion that the Forest Conservation Variance to remove 51 specimen trees is necessary. Forest Conservation Plan shows the areas where this variance was requested. (Dev. Ex. 49). He notes there are 127 specimen trees scattered throughout the Property and the development will result in 51 being removed of which 1/3 are in poor condition. He explained that there was a lot of 'negotiation' with the County agencies in regard to the development footprint and its associated environmental impact. The County denied the Developer's initial Forest Conservation Variance to remove 89 trees. Ultimately, the lots proposed in the northern portion of the Property and the SWM above-ground device were removed. At that point, the County agreed to a 'proposed overall retention' plan which included the proposed removal of 51 specimen trees. The County stressed a need for a larger forested area in the northern portion of the Property.

Mr. Canoles testified that the initial Forest Conservation Plan addressed only the impacts caused by the residential units for Phase I and because of that, DEPS denied the Forest Conservation Variance. Ultimately, because the Developer agreed to provide Forest Conservation above the State mandated, breakeven point, the County agreed to approve the removal of 51 specimen trees. Mr. Canoles emphasized that the breakeven point is 21.8 acres and the Developer is retaining 15 acres, for a total of 37.2 acres to be placed into the Forest Conservation Easement.

In summary, Mr. Canoles stated that, for this project, the removal of specimen trees is tied to the approved Forest Conservation Easement areas because both were factored into the 'negotiation' with DEPS in order to get approval of the Forest Conservation Plan. He stated that the Director of DEPS agreed to settle on the Forest Conservation Plan after considering the distribution of the specimen trees throughout the Property, in conjunction with the Forest Conservation Easements in both Phase I and Phase II. Mr. Canoles described the approved Forest Conservation Plan as a "consolidated cumulative layout" and as such, Mr. Canoles explained that the Forest Buffer Variance, the Forest Conservation Variance and the Forest Conservation Plan are all intertwined.

He advocated that if the specimen trees which DEPS has recommended for removal are not approved for removal in this case, then the Developer has lost a position of negotiation in trying to retain more housing units. The Developer agreed to trade the removal of housing units in the northern section in exchange for the removal of specimen trees in the Phase II areas (BR and ML zones). The Developer has now committed to a layout based on "a comprehensive assessment of the property" and will have lost the benefit of having the approval to remove the specimen trees when a development plan is approved for Phase II. In short, he stated: "We may have tried to negotiate harder to retain the extra lots in the residential, because we wouldn't be

assured the layout in the business section.”

Additionally, Mr. Canoles thought it significant that the specimen trees which are located in Phase II areas and which have been recommended by DEPS for removal, will not be removed during Phase I construction. However, specimen tree # 4 (ST#4) and specimen tree #12 (ST#12) (which are both located in the Phase II area) will need to be removed; the former to construct Avalon Ridge Rd., and later for the widening of US Rt. 1 for the right-turn deceleration lane into the Property. He opined that all of the specimen trees to be removed are outside the Forest Buffer and do not provide a unique water quality benefit as compared to a forest resource. In his view, the Forest Conservation Variance meets all requirements of BCC, §33-3-116(d) and (e).

In regard to the original proposal for LOS provided by the Developer, Mr. Canoles echoed Mr. Rowe’s testimony in stating that neither DEPS nor Jim Hermann were in favor of a large, flat LOS area because it would have required grading. The County wanted to retain the natural forested areas and the specimen trees there. In summary, Mr. Canoles opined that the Blacklined Development Plan meets the spirit and intent of the Forest Conservation Act because it retains 60% of the specimen trees for Phase I and Phase II while also retaining 15 acres over the State-mandated break-even point.

Cheryl Reidel is a property owner of 1728 Selma Ave, and previously owned a flower business in Arbutus. She testified in favor of the proposed development indicating that housing is lacking in the area. She testified that the Property’s location near UMBC and US Rt.1, its large size, its Master Plan designation as a Commercial Revitalization District, as well as being located in a County Enterprise Zone, makes it a suitable location for housing development. She views the proposed project as a revitalization and an improvement to the Halethorpe area. Ms. Reidel testified that having a walking trail was good for all ages of residents.

PROTESTANTS' CASE.

Over the course of the six (6) days of hearings, there were many Protestants and/or interested citizens who attended. Each Protestant and/or citizen was permitted to cross examine both the County witnesses as well as each of the Developer's witnesses. In addition, each Protestant and/or citizen was permitted to testify, to submit written statements prior to or during the hearings, to submit evidence, and/or to file Memorandums in Lieu of Closing Argument by January 12, 2022. The record will reflect the questions asked.

However, there were several Protestants who appeared for each or most of the hearings namely: Michael McAuliffe, President of Halethorpe Improvement Association ("HIA"); Bill Carter, Vice President of HIA; Casey Jackson, 1712 Summit Avenue, and Tiffany Wiseman, 4247 Maple Avenue.

HIA, through Mr. McAuliffe, filed a Memorandum in Lieu of Closing Argument and through Mr. Carter, a Development Hearing Statement. Collectively, these documents summarize the HIA concerns which were: (1) Setbacks; (2) Landscape Strips; (3) Compatibility; (4) Local Open Space ("LOS"); (5) Storm Water Management; and (6) Maximum Permitted Density. In both documents, HIA made clear that it was not against development of the Property but has concerns about what has been proposed.

A. Setbacks. HIA contends that the front yard and rear yard setbacks for the rear-loaded (garage in rear) townhomes does not meet the BCZR or CMDP setbacks. Specifically, HIA argues that the Developer created the notion of a "traditional" townhome as one with parallel parking spaces in front and rear alley access into the rear garage in order to reduce these setbacks. HIA interprets the illustration in the CMDP (p.28) as describing an access easement for use by homeowners, not an alley for travel. HIA argues that future property owners of those rear-loaded

townhomes will have less private rear yard open space to use. By doing so, HIA believes the Developer is manipulating the setbacks to add extra townhomes.

Specifically, HIA contends that the townhomes with garage units listed in BCZR, §1B01.2.C.1.c only refers to front loaded units. This belief is based on the Citizens Guide To Zoning (“CGZ”) wherein a chart labeled: *Comparison of Density Residential Zones Housing Types and Setbacks* (HIA Ex. 23; CGZ, p. 28). Under Single Family Attached for DR 5.5, it reads:

25 feet for units with front-loaded garage,
13 feet of units fronting perpendicular parking,
10 or 15 feet for units fronting parallel parking

As HIA reads the BCZR, the CMAP and the CGZ, HIA believes the documents provide inconsistent front yard setbacks. In HIA’s reading of the CMAP, only a detached home can be ‘traditional’ based on a paragraph which uses that word in describing detached single-family homes. HIA then concludes ‘Group Housing’ can never be traditional housing.

B. Landscape Strips. HIA adopted a statement in the DOP CPC Comment dated August 25, 2020 that intervening landscape strips should be added to every street in the proposed development where parallel parking is proposed. (Dev. Ex. 4). HIA submitted a detailed overlay of the development plan showing in red where intervening landscape strips should be added. (HIA Exs. 9 and 10). HIA also produced street view photographs of another townhouse development project which has landscape strips.

C. Compatibility. HIA contends that the proposed townhomes are not compatible with the single family existing homes in Halethorpe. HIA produced exhibits to demonstrate the number of townhomes that can fit into the same square foot area as a property with single family home in Halethorpe. (HIA Ex. 11). The argument is that townhomes proposed do not meet the arrangement and orientation or the scale, proportion and massing in BCC, §32-4-402(d)(1) and (8). Adopting

a statement from DOP CPC Comment, in HIA's view, this creates a 'wall' effect along the proposed streets. (Dev. Ex. 4).

D. LOS. HIA also contends that each of the LOS areas must meet both a 75 ft. width and not have a grade greater than 15% on any part of the LOS area. (HIA Ex. 4). Additionally, HIA argues that the approved LOS violates the Baltimore County LOS Manual which requires connection between the four (4) LOS areas. HIA submitted an exhibit outlining where they prefer LOS to be, showing a longer trail system, and a bridge spanning environmental areas, the trail diverted away from Tiffany Wiseman's house, and with more LOS in place of proposed townhomes. (HIA Ex. 4).

E. SWM. HIA's emphasizes that Halethorpe lacks SWM infrastructure which has caused erosion on properties along Maple Ave. and downstream. Because of this, HIA insists that the County (or this Developer) must correct the existing SWM deficit within the neighborhood as part of, or prior to, the approval of the Development Plan for this Property. HIA attributes the erosion and flooding problems to: "forty years of neglect and mismanagement on the part of Baltimore County." (See Bill Carter, Development Hearing Statement). On behalf of HIA, Mr. Carter produced aerial and street view photographs to demonstrate how water runoff from the Property and Halethorpe Elementary School funnels through inlets, and then converges to cause flooding on Ridge and Randall Avenues, as well as erosion downstream. (Bill Carter Exs. 1, 2). While HIA agrees that "the developer has gone to great lengths to address stormwater management from within the footprint of the development", in HIA's view, "[t]here is no indication that the County has plans to accept responsibility for or address this [offsite] issue." (*Id.*).

F. Maximum Permitted Density. HIA disagrees with the express language in BCZR, §1B01.2 which provides that the maximum gross density for DR 5.5 is determined by applying

the total gross residential acreage of 45.86 acres, or 252 permitted residential dwelling units. HIA contends that there should be reduction from the gross density for the environmental land that cannot be developed.

Ms. Wiseman testified in opposition to the paved trail that DEPS approved through the Alternatives Analysis because the trail will be within 2 ft. of her home. (Wiseman Ex. 1). She proposes that the trail be redirected so that it runs toward the townhomes over a bridge through the environmental areas. (Wiseman Ex. 1, [diagram]).

She further contends that allowing Maple Avenue to remain an open access road to the development will add cut-through traffic into the neighborhood. She produced a video of traffic conditions on Maple Ave. to emphasize this point. (Wiseman Ex. 3). She believes that the Maple Avenue entrance should be emergency access only and that the fourteen (14) townhomes proposed on the right side of Maple Avenue next to the entrance to the Property should be eliminated. (Wiseman Ex. 2). As described by Ms. Wiseman, the Maple Avenue traffic conditions were at the written direction of Halethorpe Elementary School which closed its parking lot. (*Id.*). Lastly, Ms. Wiseman reiterated the testimony of HIA that flooding and erosion are existing problems at Halethorpe Elementary School and along Maple Avenue. (Wiseman Ex. 4, 5).

Ms. Jackson testified she was initially entirely opposed the development due to the same issues raised by HIA. Since then, she has expanded her view and sees some benefits in terms of increasing diversity of residents and the planned amenities such as the tot lot and trail system. However, Ms. Jackson expressed her concern about the lack of sidewalks and lack of traffic calming measures throughout the neighborhood. She has been proactive in trying to get the County to address these concerns to no avail. She expressed her frustration that property owners on her street were not willing to forego their front yard space in order to have sidewalks constructed along

Summit Avenue.

Ms. Jackson was candid that during the Good Shepherd operation drivers going to and coming from the facility would speed through the neighborhood as do parents picking up their children from Halethorpe Elementary School. Ms. Jackson is concerned that if Maple Avenue is not an emergency access only, then increased traffic from the development will cause life safety issues for the children. To corroborate the existing traffic problems on Maple Avenue, Ms. Jackson showed a video that she took while walking on Maple Avenue. She views the existing problems will be exacerbated with this development.

Ms. Jackson agrees with Ms. Wiseman that the fourteen (14) homes proposed to be located on Maple Avenue should be eliminated from the Development Plan. Ms. Jackson surmised that because these homes will not have basements, the owners will use their garages as storage. When that occurs, she concluded that each home with 2 or 3 cars will then parallel park their vehicles along Maple Avenue causing more traffic problems.

DEVELOPER'S REBUTTAL CASE

Mr. Cornelius was recalled to testify about traffic concerns expressed by the Protestants. Mr. Cornelius repeated that only 10% of the traffic generated by the development will use Maple Avenue because the new Avalon Ridge Blvd. entrance is a direct route to major arterial access. He stressed that both the County and SHA agrees with the TIA in this regard. He believes that, conversely, it is more likely that the existing residents of the neighborhood will begin cutting through the new development for direct access to Washington Blvd. With regard to the traffic and parked cars along Maple Avenue, he attributes this situation to a poor operation by Halethorpe Elementary as he has experience designing drop off and pick up operations for schools. With the addition of the driveways for the 14 townhomes on Maple Avenue, he added that there will be less

spaces available for parallel parking and therefore, the school will need to design a better operation. He noted that the proposed driveways for those townhomes along Maple Avenue will be 40 ft. long which is long enough for 2 vehicles.

Developer also recalled Brandon Rowe, PE. who repeated that the rear yard setback of 30 ft. for rear-loaded townhomes had been exceeded because the private rear yard depth would be 25 ft. with the additional 8 ft. to the center of the private alley. He explained that a public alley refers to a right of way, whereas a private alley is a use in common easement. The private alley on the Blacklined Development Plan is 16 ft. wide and as such, the property line for each rear loaded townhome extends 8 ft. to the center of the alley. (See Dev. Ex. 45, C-302, Inset for Rear-loaded Townhouses with Garages and Driveways). Mr. Rowe referred to CMDP which states that the distance from a rear building face to a tract boundary or rear property line shall be determined by adding the private yard area (25 ft.) to the 5 ft. (here 8 ft.) use in common easement. (CMDP, p. 28). In no case shall this total distance be less than 30 ft. (CMDP, p. 27). With the 25 ft. depth and 20 ft. wide rear yard area, the Developer has provided the required 500 sf of private rear yard area as required by CMDP, with all rear yard decks being elevated off the ground. He stated that this was accepted by OZR. Mr. Rowe confirmed that this rear setback is on the Blackline Development Plan. (Dev. Ex. 45). Mr. Rowe also testified that the 14 townhomes on Maple Avenue have 40 ft. long driveways measured from the back of the sidewalk to the building face. Finally, Mr. Rowe explained that BCZR, §102.3 as highlighted by HIA which reads that an alley cannot be part of the rear yard, refers to a public alley which is a 'right of way' as defined in BCZR, §101.1. In this case, the Blacklined Development Plan all alleys are labeled as "Private Alley."

The Developer also recalled Carl Richards. Mr. Richards explained that BCC, §32-3-102 allows the Director of OZR, who reports to the Director of PAI, to interpret the BCZR. For three

(3) decades, it was Mr. Richards' job to interpret the BCZR. 'Traditional' type development can be seen in the eastern side of the County where row homes have parallel parking in the front of the property and an access easement in the rear. In this case, he stated that the BCZR refers to the CMDP for a definition of the term 'traditional'. However, the CMDP does not define the word 'traditional.' As a result, OZR has interpreted it to mean parallel parking in front with a use-in-common alley in the rear which is illustrated in a diagram in the CMDP.

The final witness for the Developer in rebuttal was Christopher Jakubiak. Mr. Jakubiak opined that the townhomes are not incompatible with single family homes. He referred to the CMDP which ensures compatibility between housing types. He stated that the context and distances from the townhomes to existing single family homes in Halethorpe is important. He added that BCC, §32-4-402 demands that context and building elements including balance and rhythm and must be considered in determining capability. As applied here, he reiterated that compatibility exists in this case because both single family homes and townhomes use the same architectural elements.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

The foregoing dictates that a Hearing Officer may not deny a development plan which meets all

of the development rules, regulations and applicable policies.

In *People’s Counsel v. Elm Street Development, Inc.*, 172 Md. App. 690 (2007), the Court of Special Appeals held that if the county agencies recommend approval of a development plan, it is “then up to [protestants] to provide evidence rebutting the Director’s recommendations.” *Id.* at 703. It should also be noted that in Baltimore County “the development process is indeed an ongoing process, and the hearing officer’s affirmation of the plan is just the first step.” *Monkton Preservation Association, et al. v. Gaylord Brooks Realty Corp.*, 107 Md. App. 573, 585 (1996). The County agencies will continue to review the Developer’s evolving plans and construction activities through every phase of the development process to ensure compliance with all County laws and regulations.

1. Forest Buffer Variance and Alternatives Analysis.

The Director of DEPS has the sole and exclusive authority to grant both Forest Buffer Variances and Alternatives Analysis under BCC, §33-3-106 as follows:

§ 33-3-106. - SAME — VARIANCES.

(a) *Authority to grant.* The Director of the Department may grant a variance:

- (1) For those projects or activities where strict compliance with the requirements of this title would result in practical difficulty or unreasonable hardship;
- (2) For those public improvement projects or activities where no feasible alternative is available;

* * * *

The decision by the Director of DEPS to grant or deny either of these requests is not subject to review or approval of OAH. Rather, those decisions must be appealed directly to the Board of Appeals, within 30 days, pursuant to the MD Code Ann., LG, §10-305 – Express Powers Act; and

Baltimore County Charter, Article VI, §602 (See *In the Matter of DMS Development*, Case No.: CBA-15-004; See also *In the Matter of Lutherville*, Case No. CBA-14-009 and on appeal, Case No.: 03-C-15-002400).

On September 16, 2021, Developer filed both a Forest Buffer Application (Dev. Ex. 53) and an Alternatives Analysis (Dev. Ex. 52). A Plan to Accompany the Forest Buffer Application and Alternatives Analysis was also filed. (Dev. Ex. 51). By letter dated October 14, 2021, the Director of DEPS approved the Forest Buffer Variance (Dev. Ex. 41; County Ex. 15) and the Alternatives Analysis (Dev. Ex. 42; County Ex. 17). These decisions were not appealed.

The approval of the Alternatives Analysis included the paved trail located in LOS #1 which is of particular concern to Protestant Tiffany Wiseman because the trail, as she demonstrated on her exhibits, will run along the shared property with her house. (Prot. Wiseman, Ex. 1). She expressed her discontent with its approval citing various issues which may impact her property including, safety, liability, trash, crime and increased storm water runoff. The Developer countered that Protestant Wiseman created the 2 ft. setback when she was granted an Administrative Variance in Case No.: 2019-0326-A to construct a two-story addition to the side of her home adjacent to the proposed trail, thereby reducing the required 10 ft. setback to 2 ft. (Dev. Ex. 56, 57). As set forth above, it is clear that the BCC, §33-3-106 prohibits the undersigned from reviewing and/or changing the Director of DEPS' decision to approve the trail as part of the Alternatives Analysis. Protestant Wiseman had to seek relief by filing an appeal with the Board of Appeals.

2. Forest Conservation Variance.

Unlike the Forest Buffer Variance and Alternatives Analysis, BCC, §33-6-116(g)(1) authorizes OAH to take judicial notice of the Director of DEPS decision to grant or deny a Forest

Conservation Variance. As a result, the final decision to approve the removal of 51 specimen trees (“STs”) as requested by the Developer, rests with the undersigned and on appeal, with the Board of Appeals. The appropriate sections of BCC read in pertinent part as follows:

§ 33-6-116. - SPECIAL VARIANCES.

(a) *In general.* An applicant may apply for a special variance if the implementation of this title would result in unwarranted hardship to the applicant because of the special features of the site that is the subject of the request or as a result of other circumstances.

(b) *Application.*

* * * *

(4) Upon acceptance of the petition for special variance, the Director of Permits, Approvals and Inspections shall forward the petition to the Director of Environmental Protection and Sustainability.

(5) After receiving the petition, the Director of Environmental Protection and Sustainability or the Director's designee shall review the information presented and grant or deny the petition, as authorized in this section.

(c) *Findings.*

(1) In order to grant a special variance, the Director of Environmental Protection and Sustainability or the Director's designee must:

(i) Find that compliance with the requirements in this title would cause unwarranted hardship; and

(ii) Make other findings as required in this section.

(2) The decision shall be presented in writing.

(d) *Unwarranted hardship.* For a finding of unwarranted hardship, the applicant must show:

(1) That the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the applicant of all beneficial use of the applicant's property;

(2) That the plight of the applicant is due to unique circumstances and not the general conditions in the neighborhood; or

(3) That the special variance requested will not alter the essential character of the neighborhood.

(e) *Additional findings required.* In addition to a finding of unwarranted hardship, the Director must find:

(1) That granting the special variance will not adversely affect water quality;

(2) That the special variance request does not arise from a condition or circumstance which is the result of actions taken by the applicant; and

(3) That the special variance, as granted, would be consistent with the spirit and intent of this title.

(f) *Transmittal of decision.* The decision of the Director of Environmental Protection and Sustainability shall be forwarded to the Department of Permits, Approvals and Inspections at least 5 working days before the hearing officer's hearing, for inclusion in the Hearing Officer's file, and to the applicant.

(g) *Hearing.*

(1) At the hearing, the Hearing Officer shall take judicial notice of the Director's decision.

(2) (i) If the Director's decision is to grant the special variance, it shall be considered a recommendation to the Hearing Officer, who may either grant or deny the special variance requested.

(ii) If the Hearing Officer reverses the Director's recommendation to grant the variance, the Hearing Officer's decision shall conform with subsections (c), (d), and (e) of this section.

(3) If the Director's decision is to deny the special variance, the Hearing Officer may not reverse the decision, and the Director's decision shall be fully incorporated into the Hearing Officer's decision and order.

* * * *

(j) *Board of Appeals*. The Board of Appeals may grant, deny, or modify, as defined in Article 32, Title 4, Subtitle 2, Part VIII of the Code, a decision of the Director or of the Hearing Officer.

On October 7, 2021, Developer filed an updated Application for Forest Conservation Variance (Dev. Ex. 50) to remove 51 of the 127 specimen trees located on the Property along with a Preliminary Forest Conservation Plan (Dev. Ex. 49). As indicated by Mr. Canoles, the original request by the Developer was to remove 89 specimen trees. By letter dated October 14, 2021, the Director of DEPS approved the removal of the requested 51 specimen trees. (Dev. Ex. 40; County Ex. 16). At the hearing, extensive questions were presented to both Mr. Livingston and Mr. Canoles as to why specimen trees were being removed from areas on the Property where future development may occur in Phase II. These future development areas are depicted on Preliminary Forest Conservation Plan as “Future Use Areas”. (Dev. Ex. 49).

Although he was not able to provide a reference to the BCC, Mr. Livingston testified that DEPS is required under BCC to review the entire Property, and not only the area sought to be developed (i.e. Phase I) unless the Property consists of multiple parcels. In this case, there are 3 separate parcels. (Dev. Ex. 35, pp. 6, 7). The Developer highlighted that DEPS would only consider the Forest Conservation Variance if the Developer agreed to place three (3) environmental areas into permanent Forest Conservation Easements (“FCE”) and thereafter, to record the FCEs in Land Records of Baltimore County. The three (3) FCE will total 36.77 acres; 26.9 acres of which are located in the DR zoned portion and 9.9 acres are located in the Phase II, ML and BR

zoned portions. I understand that the FCE acreage will exceed the threshold or break-even point by 15 acres +/- (21.8 acres of forest conservation is required). In my view, the advantage obtained by the Developer in agreeing to this settlement is the approval to remove the Phase II specimen trees.

Mr. Canoles explained the “negotiation” which occurred with DEPS in this regard. He stated that if the decision of the Director of DEPS to remove the 51 specimen trees is not also approved herein, then the Developer will have foregone its negotiation leverage by agreeing to place more of the Property into an FCE than may have been needed, thereby relinquishing its settlement posture to insist that more residential units remain in the FCE #3 (north western portion of the Property). While the Developer acknowledges that the future development areas where certain specimen trees are slated for removal is “hypothetical”, Developer contends that a decision on this issue should consider the additional 15 acres in the FCE areas, as well as the 24.50 acres +/- of Forest Buffer easements, both of which preclude future development in perpetuity on the Property as shown on the Preliminary Forest Conservation Plan. (Dev. Ex. 49). I note that the Forest Conservation Variance Application states that any specimen trees approved for removal under the Forest Conservation Variance, may not ultimately be removed. (Dev. Ex. 50).

A. Future Use Areas, BR Zoned Area and ML Zoned Area.

I disagree with the Director of DEPS’ recommendation to remove each specimen tree designated **in red** and located within a “Future Use Area”, and/or, outside of the Future Use Area but within either the BR Zoned Area or ML Zoned Area, as shown on the Preliminary Forest Conservation Plan (collectively these areas will be referred to the “Future Use Areas”). (Dev. Ex. 49). I find it contrary to the express language and spirit and intent of BCC, §33-6-116 *et seq* to broadly recommend removal of STs as part of an overall negotiation (however environmentally

friendly) without having development plans for those Future Use Areas. Indeed, the Forest Conservation Variance approval letter states that of the 51 STs approved for removal, 20 are in good condition and 15 are in fair condition.

Having said that, it should not be lost on the Protestants that this strategic negotiation by DEPS, to lock-up larger FCE areas in perpetuity, thereby obtaining a reduction in the number of residential units from 196 to 182, in exchange for the temporary and uncertain recommendation of a Forest Conservation Variance, will preserve the natural environment, serving as a benefit to the surrounding community. (Dev. Ex. 49). With the additional denial of STs herein, DEPS would likely view this outcome as an environmental victory. The Developer's decision to agree to what Mr. Canoles described as a "consolidated cumulative layout" of the Forest Conservation Variance, Forest Conservation Plan and Forest Buffer Variance, in order to obtain DEPS' approval of the Forest Conservation Plan, was a risk taken. Accordingly, the Forest Conservation Variance to remove 32 Future Use Area - STs shaded in red on the Forest Conservation Plan identified as 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 48, 49, 105, 112, and 127, will be denied (hereinafter the "Future Use Area – STs").

In making this decision, I rely not only on the statutory scheme in BCC, §33-6-116, but also on the testimony of Mr. Levy and Mr. Rowe which confirmed that no development plan has been submitted for the "Future Use Areas", much less a concrete idea of what is planned for any of those areas. Mr. Levy candidly testified that he is considering all development options including more residential development or commercial uses, as he is entitled to do. In this case, the testimony of Developer's experts was not in regard to why each Phase II tree, in its present location, produces an unwarranted hardship. It is of no moment that Future Use Area – STs would not actually be removed until the Phase II development is approved, because the approval would have already

been granted.

Specifically, in regard to the required finding in BCC, §33-6-116(d)(1), without a development plan proposed for the Future Use Areas, there has been no showing that the Future Use Areas cannot yield a reasonable return or would deprive the Developer of all beneficial use of those areas. I find that the plight of the Developer in seeking the removal of 32 Future Use Area – STs under Subsection (d)(2) is not due to any unique circumstances of the Future Use Area development but rather is due to general conditions of the neighborhood as corroborated by the photographs produced by HIA. (HIA Ex. 2). Finally, I find that the removal of the Future Use Area – STs will alter the essential character of the neighborhood as those trees have existed on the Property during the operation of the institutional facility and provided a buffer along Washington Blvd. Because none of the factors under Subsection (d) have been met, I find that the Developer has failed to prove that there is an unwarranted hardship with regard to the removal of each of the requested Future Use Area – STs.

In regard to the required findings in §33-6-116(e)(1)(2) and (3), I find that the removal of 32 STs will certainly affect water quality. Under (e)(2), I find that the removal of the Future Use Area – STs arises from the circumstances of the Developer's decision to enter into global environmental settlement with DEPS for the whole Property as reiterated herein. I find that the approval to remove those STs without a development plan for the Future Use Areas being the subject of review, is also inconsistent with the spirit and intent of Title 33 which carves out a separate and independent review by OAH of specimen tree removal. Accordingly, I find that the Developer has failed to meet all of the required factors in Subsection (e) and therefore the Forest Conservation Variance with regard to the Future Use Area – STs must be denied.

However, that denial notwithstanding, I will grant the Forest Conservation Variance for

two (2) Future Use Area – STs: (1) ST4 which is within the limit of disturbance (“LOD”) for the grading ¹ needed to construct Avalon Ridge Blvd.; and (2) ST12 which was mislabeled on the Forest Conservation Plan as ‘To Be Removed in Future Phase’ but which is within the LOD for the widening of Washington Blvd. (U.S. Rt. 1). Because the 182-unit residential development is depending on the construction of Avalon Ridge Blvd., and the widening of Washington Blvd. to comply with SHA mandated right turn lane into the Property, these two (2) Future Use Area - STs will be approved for removal. I find that without their removal, the Developer would suffer an unwarranted hardship in not being able to construct the proposed townhomes which is dependent upon the access roads.

Without the removal of ST4 and ST12, I find that the DR 5.5 zoned land will not yield a reasonable return and the Developer would be deprived of the beneficial use of the DR 5.5 zoned area, particularly given the extensive environmental constraints. I also find that the plight of the Developer is due to the unique locations of ST4 and ST12 where road construction needs to take place. For these STs, the plight is not due to the general conditions of the neighborhood as Avalon Ridge Rd. will be a new road. I find that the removal of these 2 STs will not change the essential character of Halethorpe.

In regard to the findings in BCC, §33-6-116(e)(1), the removal of ST4 and ST12 will not affect water quality due to their condition and isolation. ST4 is a Black Oak in poor condition with trunk rot. (Dev. Ex. 49). ST12 is a Red Oak in poor condition with dieback in its canopy. As to BCC, §33-6-116(e)(2), the condition or circumstance which has caused the request for removal is the new road construction the location for which was dictated by the site constraints and lack of

¹ Limit of Disturbance (“LOD”) is addressed in BCC, §33-5-104 (b)(8)(iii): (iii) the limit of disturbance (“LOD”) including: 1. Limit of grading (grading units if applicable); and 2. Initial, interim and final phases.

alternatives for other access locations. I find that granting the Forest Conservation Variance for ST4 and ST12 is within the spirit and intent of Title 33 which permits removal upon a showing of unreasonable hardship. Thus, Subsection (e)(1), (2) and (3) have been met.

While the Developer failed to explain why each of the Future Use Area – STs required removal, upon review of the Preliminary Forest Conservation Plan, it is clear to me that the majority of both ST44 and ST45 are within the LOD for the residential development retaining wall and/or Iron Ore Court. (Dev. Ex. 49). Given the elimination of residential units from other parts of the Property, I find that the Developer would be deprived of reasonable use of that residentially zoned area and would not yield a reasonable return if the retaining wall and/or Iron Ore Court were not able to be constructed because of those STs. In my view, the plight of the Developer in the removal of these STs is due their unique location near that group of townhomes and their removal will not alter the essential character of Halethorpe. Thus, I find that Subsections (d)(1)(2) and (3) have been met.

Additionally, I find that the removal of ST44 and ST45 will not adversely affect water quality given the retention of large forested areas which will be retained. The Developer did not cause the circumstances necessitating their removal but rather, in making beneficial use of the DR 5.5 zoned area by consolidating housing there, removal of both trees is needed before constructing Iron Ore Court and/or the retaining wall. I find that granting the removal of these STs is within the spirit and intent of the BCZR which permits residential housing by right in the DR 5.5 zone. Accordingly, all of the additional findings under Subsection (e) have been met.

B. Phase I – Specimen Tree Removal.

When explaining why the STs in Phase I required removal, Mr. Canoles opined that it was based on their location in the Phase I area. Notwithstanding that testimony, in reviewing the

Preliminary Forest Conservation Plan, it is clear to me that the following STs require removal in order to construct the residential development including without limitation, homes, roadways and/or infrastructure: ST54; ST55; ST56; ST57; ST82; ST84; ST97; ST98; ST99; ST100; ST101; and ST125 (the “Phase I –STs”).

Applying Subsection (d)(1) to the above listed Phase I – STs, given the consolidation of proposed townhouses as shown on the illustrative site plan (Dev. Ex. 35), I find that the location of each of these STs will preclude the reasonable return on the residential development area thereby depriving the Developer of the beneficial use of the Phase I Area. Additionally, I find under Subsection (d)(2) that the plight of the Developer is due to the unique location of these Phase I - STs in either the existing roadway, the proposed streets, the proposed homes and/or its infrastructure. Under Subsection (d)(3), I find that removal of these Phase I – STs will not alter the essential character of Halethorpe because the same area is now developed with institutional buildings and accessed via Maple Avenue. Moreover, these STs are separated from Halethorpe by both the distance and other vegetation and thus not impacting that neighborhood.

With regard to the required factor in Subsection (e)(1), I find that the removal of these randomly placed Phase I – STs will not adversely affect water quality because their removal will not directly impact any streams, wetlands or floodplains as the area is already developed. Additionally, water quality will not be affected by their removal given the FCE areas and LOS areas which will surround the proposed residential use. Because the proposed residential area is already developed, I find that the requested Forest Conservation Variance does not arise from a condition or circumstance which is the result of actions taken by this Developer under Subsection (e)(2) but rather the Good Shepherd operation. Finally, I find that given the maximum density for the DR 5.5 portion of the Property could yield 252 residential units, the removal of these Phase I

– STs in order to construct townhomes, roadways and improvements is consistent with the spirit and intent of Article 33, Title 6, which as Mr. Canoles pointed out, is not to prevent development.

However, with regard to the proposed removal of ST24 and ST25, I find that the Developer has failed to prove that an unwarranted hardship will be suffered if these STs, although located within Phase I area, are not removed. In regard to BCC, §33-6-116(d)(1), I find that the Developer has failed to show that the DR 5.5 zoned land cannot yield a reasonable return, or will deprive the Developer of all beneficial use of the Property if ST24 and ST 25 are not approved for removal. There was no testimony from Mr. Canoles other than that ST 24 and ST 25 should be removed because they are located in the DR 5.5 zone. In viewing the Preliminary Forest Conservation Plan (Dev. Ex. 49), ST24 and ST25 are only minimally located in the LOD and without specific evidence, I find that the Developer failed to meet the requirements in BCC, §33-6-116 for these Phase I – STs. Indeed, ST24 and ST25 have existed along with the institutional care facility.

In regard to the second criteria under §33-6-116(d)(2), I find that the plight of the Developer is *not* due to unique circumstances but rather general conditions in the neighborhood. As counsel for the Developer stated at the hearing, it is difficult to determine from looking at the Preliminary Forest Conservation Plan whether ST24 and ST25 even need to be removed. In regard to Subsection (d)(3), I find that the removal of ST24 and ST25 would alter the character of the neighborhood in that these trees are located in an area of forest retention.

Applying Subsection (e)(1), I find that the removal of ST 24 and ST 25 will affect water quality as they are located in a Forest Conservation Easement area and next to wetland buffers. ST24 is also a 42 inch Chestnut oak in fair condition. In regard to Subsection (e)(2), the plight of the Developer here is not due to unique circumstances requiring removal for the residential

development but rather due to the general conditions of the neighborhood which include wetland areas, streams and floodplains. Lastly, I find that granting a Forest Conservation Variance for ST24 and ST25 is not within the spirit and intent of Article 33, Title 6 which seeks to preserve specimen trees unless an unwarranted hardship can be shown. Thus, each of the additional findings have not been met.

3. Forest Conservation Plan.

BBC, § 33-6-109. - Preliminary Forest Conservation Plan, requires the following:

(a) *Required information.* A preliminary forest conservation plan shall:

(1) Be submitted and reviewed with the development plan in accordance with and subject to §32-4-225 and §32-4-226 of the Code;

* * * *

(b) *Review and approval.*

(1) Except as provided in paragraph (2) of this subsection, the review and approval of the forest stand delineation and preliminary forest conservation plan shall be subject to § 32-4-227 of the Code.

BCC, §32-4-227 is the Hearing Officer's Hearing on a development plan as occurred in this case.

In reviewing the Preliminary Forest Conservation Plan, I find that it contains all of the required elements in Article 33, Title 6 generally, and specifically meets the provisions in BCC, §33-6-108 and §33-6-109. In particular, I find that the retention of forested areas in their natural state and the incorporation of those natural areas into the LOS plan is in keeping with the priority to retain existing forests which reads:

§33-6-108 (a) *Priority to techniques for retaining existing forest.* In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest onsite.

Accordingly, with the exception of specific specimen trees which shall not be removed as set forth above and as contained in the Order which follows, the Preliminary Forest Conservation Plan (Dev. Ex. 49) shall be approved.

4. Stormwater Management.

The unrefuted evidence was that there are no existing storm water management facilities (“SWM”) on the Property and this contributes to the existing water runoff problems in the surrounding neighborhood. However, I find that also contributing to this problem is the lack of storm water management within the neighborhood including the absence of any at Halethorpe Elementary School. At this stage in the review process, BCC, §33-4-107 only requires a development plan have Concept SWM approval to have the following information:

§ 33-4-107. - Stormwater Management Plans.

(a) *In general.* Unless an exemption, waiver, or variance has been granted and except as provided in subsection (f) of this section, before any grading or building permit is issued or any grading or building is conducted, the applicant shall comply with the requirements for the concept, development, and final stormwater management plans.

(b) *Concept stormwater management plan.*

(1) An applicant shall submit a concept stormwater management plan that provides sufficient information for an initial assessment of the proposed project and determination as to whether stormwater management can be provided in accordance with § 33-4-106.1 of this title.

A concept SWM Plan is defined in BCZR, §101.1 as:

(h) *Concept Stormwater Management Plan.* "Concept Stormwater Management Plan" means the first of three required plan approvals that contains information necessary to allow an initial evaluation of a proposed project.

Mr. Ford testified that the project received Concept Storm Water Plan approval prior to Day 1 of

the hearing. Mr. Rowe testified that because the Property is located within the Patapsco watershed, the law only requires quality SWM devices be constructed to clean the water. However, in response to community concerns about the lack of infrastructure in the neighborhood, Developer volunteered to incur the cost of redesigning the SWM devices to install not only quality SWM devices, but also quantity SWM devices to slow the flow of water from the Property. The redesigned SWM system will clearly be more costly to the Developer.

On November 17, 2021, the SWM Section of DEPS reviewed and approved the revised Concept SWM Plan. (County Ex. 13). Under BCC, §33-4-107, this approval is all that is required for development plan approval. I find the addition of both quality and quantity SWM devices where none currently exists, is a benefit to both the townhome community and the Halethorpe neighborhood.

On this issue, HIA is in agreement that the lack of SWM, eroded drainage channels, damaged storm drains, storm water inlets, and ongoing flooding within the community should be addressed by the County. While I can appreciate HIA's attempt to use this case to draw attention to the existing problems and can understand their eagerness to have the undersigned "find a resolution to this problem," unfortunately, I have no authority to order the County to install or repair SWM facilities off-site, or to otherwise address the existing SWM issues within the neighborhood. Given that the Developer has satisfied BCC, §33-4-107(c) with a Concept SWM Plan approved by the County, I find this requirement is satisfied.

5. Front and Rear Yard Setbacks.

For the rear loaded townhomes which are accessed via a private alley as shown on the Blacklined Development Plan, HIA takes issues with both the front and rear yard setbacks provided. BCZR, §1B01.2.C.1.c provides the Building Setback requirements for attached homes

(townhomes):

c. **Group house** (except back-to-back group house).

Group House	
<i>From front building face to:</i>	
Public street right-of-way or property line	
Garage units	25 feet
Non-garage units	
Perpendicular parking	13 feet
Parallel parking	15 feet
Parallel parking, traditional	10 feet
<i>From side building face to:</i>	
Side building face	25, 20 feet*
Traditional	15 feet
Public street right-of-way	25 feet
Traditional	10 feet
<i>From rear building face to:</i>	
Rear property line	30 feet
Traditional — See CMDP	
Public street right-of-way	45 feet
Traditional — See CMDP	
<i>Any building face to:</i>	
Tract boundary	30 feet
Traditional — See CMDP	
<i>Additional setbacks:</i>	

Group House	
Setbacks for buildings located adjacent to arterial roadways shall be increased by an additional 20 feet	
Traditional — increased by 30 feet	
This table lists minimum setback requirements and building heights for urban residential use. For a fuller explanation of this requirement, consult the Comprehensive Manual of Development Policies (CMDP).	
* See CMDP Section II, Single-Family Attached.	

BCZR, §101.1 defines “Group House” as follows:

GROUP HOUSE — A group of not less than three attached dwelling units which have been constructed together in a lateral row surrounded by yard space, each dwelling unit separated from another by a party wall. Group houses include townhouse apartment buildings, group-house apartment buildings, back-to-back group houses and other groups of at least three attached dwellings. A group house does not include a duplex or semidetached dwelling. A single-family group house refers to any one dwelling within the attached group.

While HIA agrees that a townhouse is ‘Group House,’ they contend that a Group House can never be ‘Traditional’ as referenced in the Group House chart above because the words “Traditional” and “Neo-traditional” in the CMDP are only found in a Section named “Alternative Traditional Detached Houses.” (CMDP, p. 20). From this, HIA contends that “Traditional” only applies to detached homes. HIA also highlights that the BCZR, CMDP and the Citizens Guide to Zoning (“CGZ”) provide different front yard setbacks.

First, the fact that “Traditional” is called-out separately in each of the 5 categories in the Group Houses chart above, and given that a townhouse is defined as a type of Group House under BCZR, §101.1 above, means that a Group House can be “Traditional.” In separately identifying a Traditional Group House from a Non-Traditional Group House, the County Council clearly

recognized a difference in layout which may also warrant a different setback. The inclusion of the word “Traditional” or Neo-traditional in a description in the CMDP about Alternative Housing Types does not preclude a townhouse from also being classified as “Traditional.” (CMDP, p. 20). To read otherwise would be to ignore the Traditional categories separately listed in the Group Houses chart.

Second, for both the front and side yard setbacks for a Traditional Group House, the setback amounts are provided. Mr. Richards, as the former Director of OZR, provided uncontroverted expert testimony that a “Traditional” townhouse is one with parallel parking in the front and rear alley access. He testified that examples of Traditional townhomes appear in the eastern side of the County. The OZR explanation of ‘traditional’ is persuasive because it considers the word ‘traditional’ in the zoning context and not just the general common sense meaning of the word from Webster's Third New International Dictionary of the English Language, Unabridged. (BCZR, §101.1) As in this case, the front setback listed for a Traditional townhouse with parallel parking in front is 10 ft. and therefore meets the BCZR.

With regard to the setback measured from the rear building face of the townhouse, both parties agree that the rear setback is 30 ft. For the rear building setbacks, the County Council again separately listed the Traditional Group House and refers the reader to the CMDP to determine the setback. Specifically, the Group House chart identifies a specific section in the CMDP wherein it reads: “* See CMDP Section II, Single-Family Attached.” (CMDP, pp. 27-28). That CMDP Section entitled “Single Family Attached” clarifies again that townhouses and Group Houses are the same building type:

Building Type: Group Houses, Single-Family Attached (row and town houses, greater than two dwelling units, owned or rented)

Importantly, whether the layout of a townhouse lot is Traditional or not, the rear setback remains the same at 30 ft. as per the CMDP:

The distance from the rear building face to a tract boundary or rear property line shall be determined by adding the private yard area to the 5 ft. use in common easement. In no case shall this total distance be less than 30 ft.

(CMDP, p. 27). The CMDP also provides an illustration of the rear yard setback measurement when an access easement adjoins the rear property line, as opposed to a public right of way. If the alley or road is public right of way, the CMDP dictates that the setback is 50 ft., and the right of way is dedicated to, and maintained by, the County. (CMDP, pp. 27-28). The evidence here was that the private rear yard is 20 ft. wide by 25 ft. long (500 sf as required by the CMDP). (See CMDP, p. 33). Given that a use-in-common easement/private alley measuring 16 ft. wide is owned equally by each abutting property owner, the rear yard property line extends 8 ft. into the center of the alley. Together, the 25 ft. rear yard length, plus the 8 ft. easement area, provides a rear yard setback of 33 ft. This unambiguous language in the Group Houses chart, in combination with the CMDP guidance, provides no doubt that the required rear yard setback is 30 ft. and the Blacklined Development Plan exceeds that setback. Because the wording is clear, I am not surprised that the OZR has also read it the same way for years.

As to HIA's contention that BCZR, §102.3 which states that "no portion of an alley shall be considered as any part of a side or rear yard," only applies to public right of ways dedicated to the County, not private alleys owned by abutting property owners because, an alley is defined in BCZR, §101.1 as follows:

ALLEY — A right-of-way 20 feet or less in width, designated as an alley on either an unrecorded or recorded plat or dedicated as such by deed, which provides service access for vehicles to the side or rear of abutting property.

The Blacklined Development Plan clearly labels alleys as “Private Alley”. Because the alleys are private and not public, the OZR required Note 56 be added to the Development Plan:

A 16 FT USE IN COMMON EASEMENT WILL BE PROVIDED FOR ALL PRIVATE ALLEYS.

Applying the BCZR and CMDP to the evidence presented, I find the Blacklined Development Plan meets the BCZR front and rear yard setbacks as well as the CMDP minimum private yard space of 500 sf.

6. Compatibility.

The expert testimony of Mr. Jakubiak was un rebutted. In conducting his compatibility analysis, Mr. Jakubiak defined the ‘neighborhood’ under §32-4-402(a)(1) as being bound by I-895, I-95, I-695 and I-195 (a definable boundary such as a primary collector street or arterial street). The Protestants did not dispute these boundaries. I find it meets the requirements of BCC, §32-4-402(a)(1).

Under BCZR, §1B01.1.A.1.c, townhomes are permitted by right in the DR 5.5 zone, subject to compatibility under BCC, §32-4-402. The CMDP provides guidance on the compatibility objectives:

The compatibility objectives should be flexible enough to permit the most appropriate development on a particular site. Development proposals will be evaluated according to each objective. However, there are four important caveats:

1. It may not be possible for a project to meet every objective because of other regulations or site constraints.
2. Some objectives may have greater importance and appropriateness to different development sites and surrounding conditions. Variations from the specific guidelines may be considered when compensated by improvements which contribute to making the project compatible with its surroundings.

3. The guidelines for meeting each objective are not absolute; creative design alternatives are encouraged.

4. In applying the different design guidelines in the CMDP, including compatibility, the context of the surrounding area and the Land Management Areas (see the Baltimore County Master Plan) should be taken into account. Design quality guidelines may be more important for projects surrounded by undeveloped land in Growth Areas while the compatibility guidelines would be most important in urban infill sites.

(CMDP, pp. 67-68). In Master Plan 2020, the Land Management Area is a Community Conservation Area which the County has designated for both public and private investment of development projects. (County Ex. 5). It is also designated in a T-4 transect zone which means it is relegated to urban properties with dense residential housing such as townhouses. (Dev. Ex. 13). Therefore, the Property is compatible in terms of its context as set forth in the CMDP.

Applying the compatibility objectives to this development, I find that objective (1) has been met because the proposed townhomes and improvements are arranged and oriented toward the sidewalks and/or streets in manner similar to the buildings and improvements in Halethorpe which are also arranged and oriented in this fashion. The photos presented by HIA also show other townhome communities within Halethorpe. (HIA Ex. 2). The evidence was that, rather than designing a townhouse community with a central parking lot, or designing multiple parking lots, Halethorpe was used as a model.

As to objective (2), I find that the proposed layout of the townhomes, each with their own driveway and parallel parking in the front, reinforces the existing homes and streetscape patterns in Halethorpe, particularly parallel parking at the curbs. I find the proposed development also

meets objective (3) in that the streets within the development connect with, and become an extension of, Maple Avenue. As described in the CMDP, I find the interconnecting streets within the development mirror the street patterns in Halethorpe. With the interconnection of streets and sidewalks, along with the trails, links this development project with the existing neighborhood. As such, I find that it will function as one large neighborhood.

Objective (4) is met by the four (4) proposed LOS areas which contain trails and amenities such as the tot lot and green areas which will be available for the enjoyment of the residents. Likewise, in Halethorpe, the Veteran Memorial Park, located on Selma and Ridge Avenues, is wooded with green space and is similar in size to the proposed tot lot. As indicated in the CMDP, the LOS areas took advantage of the existing terrain and preserved the environmental areas which is key factor in LOS design. Given that the existing neighborhood does not have a pattern of LOS as it was built over time and does not have a central green space, I find that the proposed LOS areas fits within, and compliments, the natural surroundings of the Property. The proposed buildings are organized to take advantage of the useable outdoor space.

As to objective (5), there are not any distinctive buildings on the Property; the vacant buildings are actually undergoing asbestos removal. I find that the site design does integrate the view from tot lot to downtown Baltimore. This Property is redevelopment so it does not have a lot of natural features. In terms of the proposed landscape design in objective (6), the evidence shows that Halethorpe does not have a unified landscape pattern; there is no standard line of street trees, or parks or traffic circles. Because it is an established neighborhood, overall Halethorpe properties have well-manicured lawns, gardens and mature trees. (HIA Ex. 2). The existing neighborhood has some areas where design elements are used to separate the public areas from private areas. Toward that end, the project has been designed with street trees to separate the

public roads from the private homes. STs will be retained throughout the Property.

With regard to objective (7), there is no standard street lighting in Halethorpe. The distance between the existing community and the proposed development is such that there will not be any negative impact on the community. Street lighting will not be approved until a Final Lighting Plan is filed. The proposed historic sign will be within a green space without any negative impact on the community.

As to objective (8), in regard to scale, proportion, massing and detailing of the townhomes as compared to the detached single family homes in Halethorpe, Mr. Jakubiak's explanation of compatibility in its simplest form means 'a good fit'; it is a harmonious development and does not cause adverse conditions. Using Mr. Jakubiak's explanation of 'scale' as the size of something relative to a point of reference, I find the proposed townhouse blocks, which are segmented into identifiable units using the proportion of building and design elements such as windows, dormers, front doors, garage doors, materials to break down size/mass and add residential character to satisfy the scaling, massing and detailing factors. In comparing the two, Halethorpe homes have the same vertical windows, central focus on the front door, walkway leading to the door and the roof lines. These details provide visual and functional continuity between proposed development and the Halethorpe community.

Mr. Jakubiak described 'proportion' as the relationship between various elements on the proposed and existing homes. With the use of stylistic, decorative detailing, materials and colors, I find that a proportioned relationship exists between the Halethorpe homes and the proposed townhomes will be provided. I find that incorporating similar ridge lines, windows, door openings, pediments, dormer and decks provides a desirable visual link between the existing and proposed homes.

As a result, I find the proposed project meets each of the compatibility objectives in BCC, §32-4-402 and therefore the condition in BCZR, §1B01.1.A.1.c to permit townhomes by right in the DR 5.5 zone has been met.

7. Schools.

The Adequate Public Facilities Ordinance found in BCC, §32-6-103(e)(1)(2) states that development approval may not be granted in existing overcrowded school districts, or, if the development plan is projected to generate additional school population that would result in the school district becoming an overcrowded school district. An “overcrowded school district” is one where the enrollment of the school in the district exceeds 115% of the state-rated capacity (“SRC”). BCC, §32-6-103(a)(3). As such, the use of trailers or a lot of students at school, does not, by definition, make it ‘overcrowded’ under the Adequate Public Facilities Ordinance.

The Developer submitted a School Impact Analysis (“SIA”) under BCC, §32-6-103(g) which was approved by DOP in accordance with BCC, §32-6-103(i). (County Ex. 10; Dev. Ex. 32). The SIA confirmed that none of the schools referenced in the SIA has a projected full time equivalent enrollment equal to or over 115% of the SRC: (Halethorpe ES: 86.5%; Arbutus Middle MS: 100.8%; Landsdowne HS: 92.5%). There was no evidence that the SIA calculations were incorrect. As a result, I find that the Developer has satisfied this requirement because there is adequate capacity in the elementary, middle and high schools to serve this development.

8. Local Open Space.

The requirement for a development to provide Local Open Space (“LOS”) is found in BCC, §32-6-108(c) - a minimum of 1,000 sq. ft. of open space per residential dwelling unit. With 182 dwelling units proposed, 182,000 sf or 4.18 acres of LOS must be provided. In this case, the Developer is exceeding the required on-site LOS by providing 196,364 sf or 4.50 acres of LOS, as

shown on the Open Space Exhibit of the Pattern Book. (Dev. Ex. 35, p. 62). BCC, §32-6-108(a)(5)

defines “open space” as:

a parcel or parcels of land that is minimum *average* of 75 feet wide
or has an *average* grade of no more than 15 percent, and

- (i) is unimproved; or
- (ii) contains one or more amenities.

HIA reads BCC, §32-6-108 to mean that each of LOS areas must have both at least a 75 ft. width, and cannot have a grade anywhere within the LOS of more than 15%. (HIA Ex. 4). That position is contrary to the unambiguous language in BCC, §32-6-108 which requires that the LOS either have an *average* width of at least 75 ft., or have an *average* grade of no more than 15%.

The evidence was that Mr. Hermann approved the proposed LOS as to both its layout (separated into four (4) areas), and type (trails v fields). (Dev. Ex. 35, p. 62). DEPS, in conjunction with Rec & Parks, denied the original proposal to grade a large flat LOS area. These County agencies wanted to keep the environmental areas together including slopes, wetlands, forests and specimen trees in their natural state so that residents could enjoy those areas for walking, hiking or biking. Simply because HIA prefers large ball fields or playgrounds does not mean the LOS should be changed. Mr. Hermann explained that requirement in the LOS Manual has been superseded by the provisions in BCC, §32-6-108. BCC, §32-6-108(h) provides that “[i]f the provisions of the open space manual conflict with the provision of this section, the provisions of this section shall control.”² As such, I find that the proposed LOS satisfies BCC, §32-6-108.

Additionally, the evidence was that the Developer is providing amenities within the LOS areas including a tot lot; seven (7) benches; five (5) picnic tables; fencing; six (6) Bluebird boxes;

² Bill 73-16 charged both the Department of Planning and the Planning Board to revise the Baltimore County Open Space Manual by April 1, 2017 in order to conform to the provisions of Bill 73-1. However, it is undisputed that the Open Space Manual has not been revised.

four (4) dog stations; a 10 ft. wide paved trail; a Historic Heritage sign; seven (7) trail signs and three (3) bike racks. (County Ex. 9). The cost of amenities LOS is \$194,050.00. (*Id.*). BCC, §32-6-108(a)(2) defines ‘amenity’ as:

a feature, equipment, facility, installation or structure that contributes to the enjoyment of area residents and visitors. The term includes outdoor uses such as playground, dog park, plaza, putting green, community garden, a pergola that provides shade, or community pier, and pool uses such as a pool, tennis court, indoor paying field, gym, exercise track, lounge area, or game room.

Accordingly, I find that the proposed amenities meet this definition under BCC, §32-6-108(a)(2) and these additional features within the LOS will be a benefit to the residents of this development.

9. Maximum Permitted Density. The express language in BCZR, §1B01.2 and §1B02.2 provides that the maximum gross density for DR 5.5 is determined by applying the total gross residential acreage of 45.86 acres, or 252 permitted residential dwelling units. The County Council determined how to calculate maximum gross density which calculation does not include a reduction for environmental areas which may not be developed. I have no authority to change the statutory language and HIA’s contention that this calculation should factor in environmental areas would need to be addressed by the County Council.

10. Traffic and Sidewalks.

In order to obtain a building permit for the proposed development, the Developer is required to meet BCC, §32-6-104 entitled *Transportation* as contained within the Adequate Public Facilities Ordinance. Section 32-6-104 in turn, requires compliance with BCC, §32-4-405, §32-4-407 and BCZR, §4A02. Notably, BCC, §32-4-405 states that a development plan may not be approved unless it complies as follows:

§ 32-4-405. - STREET SYSTEM.

(a) *In general.* A proposed street system shall provide safe and convenient vehicular circulation, both within the tract and between the tract and neighboring properties or particular traffic generators.

(b) *Street requirements for approval of a plan.* The county may not approve a Development Plan or plat unless:

(1) The tract to which it applies is bordered by or will have access to a public street that is or will be made adequate to carry anticipated traffic; and

(2) Construction of the tract will provide adequate access for emergency-service vehicles to each building on the tract.

Section 32-4-407 specifies the County standards for the design and construction of streets. Both the County agency, (DPR and its Traffic Engineering Section), as well as the Developer's expert, Mickey Cornelius, opined that the roadways surrounding the Property will accommodate additional traffic generated by this development.

Mr. Viscarra testified that the Property is not located in a failing traffic shed or within a deficient area on the 2021 Basic Services Map and as referenced in BCZR, §4A02. Mr. Cornelius testified that all signalized intersections will operate at a 'C' or better level of service and the TIS projects the same level of service for the future proposed development. This level of service is an acceptable level of service. SHA also agreed to conclusion that all intersections will perform to acceptable levels of service. (Dev. Ex. 20, 30, 31).

DPR approved the Traffic Impact Study ("TIS") which Mr. Cornelius prepared (Dev. Ex. 9). The TIS accounts for existing traffic volume information, projected future traffic from other approved developments, as well as projected additional traffic from the proposed development. In its approval of the TIA, DPR and the Traffic Engineering section confirmed that there were minimal impacts to existing intersections and County roads. (Dev. Ex. 29). It was Mr. Cornelius' uncontroverted, expert opinion that the existing roads can be accommodated for proposed

development. Mr. Cornelius testified that the TIS showed that 90% trips generated from new development during peak hours are projected to use new access to Washington Blvd., and only 10% of traffic during peak hours will use Maple Avenue because direct access to Washington Blvd. is a more efficient route to major connections and/or roadways. This evidence was uncontroverted.

In regard to SHA's request about improvements to Washington Blvd. which is a State road (US Rt. 1), the Developer will be widening Washington Blvd. by 10 ft. in order to install a northbound left-turn lane at the new intersection with Avalon Ridge Blvd., as well as a southbound deceleration lane (right-turn in; approx. 12 ft. wide). The evidence was also clear that access cannot be extended to Sulphur Spring Rd due to the 70-100 ft. grade differential as well as the environmental features at that location. I find that these additional roadway improvements will assist in the efficient flow of traffic generated by the development and thereby prevent any additional burden on Washington Blvd.

There was no expert testimony presented by the Protestants to counter the testimony of either DPR or Mr. Cornelius. The testimony of the Protestants was that Maple Avenue should be closed or used for emergency access only and/or that the townhomes on Maple Ave. should be eliminated, I find that using only 1 access point will negatively affect public services to the development.

I am sympathetic to the testimony and concerns of Ms. Wiseman and Ms. Jackson. It is remarkable to me that Halethorpe Elementary School would not have a drop off and pick up route through its own parking lot where parents would remain in their vehicles to pick up/drop off children. Similarly, with regard to lack of sidewalks in Halethorpe, both the County and abutting property owners will need to rectify that issue. In my review of this Development Plan, I have no

authority to order either the County, or those property owners, to pay for or construct sidewalks where none currently exist.

Having heard the evidence on the issue of traffic and sidewalks, I find that the Blacklined Development Plan meets the requirements of BCC, §32-2-405 and further find that the proposed Avalon Ridge Blvd. as well as the streets of Halethorpe will provide a safe and convenient vehicular circulation both within and between the Property and Halethorpe neighborhood.

11. Landscaping and Landscape Strips.

Mr. Hermann approved the Concept Landscape Plan on September 23, 2021. (County Ex. 2). In its Memorandum in Lieu of Closing Argument, HIA quoted only a portion of the DOP CPC Comment dated August 25, 2020 by quoting: “in all areas where on-street parallel parking is proposed, an intervening landscape strip should be provided...” Actually, the DOP CPC Comment reads that Mr. Hermann has the decision making ability in regard to whether an intervening landscape strip will be provided. Indeed, Mr. Hermann testified that he would review landscape strips when the Final Landscape Plan is filed. The Landscape Manual does not require landscape strips must be provided. Thus, I find that the requirements of the Landscape Manual have been satisfied.

12. Residential Performance Standards, BCZR, §260.

The Developer submitted an Updated Pattern Book which was reviewed and approved by the DOP. (Dev. Ex. 35). No modifications or waivers of standards have been requested as part of this Development Plan. In considering the recommendation of DOP, and my review of the updated Pattern Book, I find that the Residential Performance Standards set forth in BCZR, §260 *et seq.* have been met. (Dev. Ex. 35).

CONCLUSION

After considering the testimony and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from the various County agencies that the Blacklined Development Plan satisfied those agencies' requirements, I find that the Developer has satisfied its burden of proof and therefore, BCC, §32-4-229(b)(1) *mandates* that the Blacklined Development Plan be approved. *Elm Street, supra.*

Pursuant to the advertisement, posting of the property, and the public hearing held thereon, the requirements of which are contained in Article 32, Title 4, of the BCC, the "Southern Crossroads" shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **26th** day of **January, 2022**, that the "Southern Crossroads" Blacklined Development Plan marked and accepted into evidence as Developer's Exhibit 45, be, and it is hereby, **APPROVED**; and

IT IS FURTHER ORDERED that the Application for Forest Conservation Special Variance pursuant to BCC, §33-6-116 for the removal of 51 specimen trees is **GRANTED IN PART**, and **DENIED IN PART**, as follows:

The following specimen trees are approved for removal:

- (1) Future Use Area: ST4; ST12; ST44; ST45.
- (2) Phase I Area: ST54; ST55; ST56; ST57; ST82; ST84; ST97; ST98; ST99; ST100; ST101; and ST125.

The following specimen trees are not approved for removal:

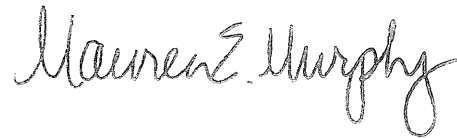
ST1; ST2; ST3; ST5; ST6; ST7; ST8; ST9; ST10; ST11; ST13; ST24; ST25; ST28; ST29; ST32; ST33; ST34; ST35; ST36; ST37; ST38; ST39; ST40; ST41; ST42; ST43; ST46; ST47; ST48; ST49; ST105; ST112; and ST127.

and,

IT IS FURTHER ORDERED that the Special Variance for Future Use Area - STs (which

was defined *supra* to include the BR and ML zones but not labeled as Future Use Area), is denied, *without prejudice*, to the Property owner and all successors in title, to file an Application for a Forest Conservation Special Variance for removal of specimen trees when a future development plan approval is sought for Future Use Areas pursuant to BCC Article 32. Title 4.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm