IN RE: DEVELOPMENT PLAN HEARING and PETITIONS FOR SPECIAL HEARING & VARIANCE – S/S Lynch Road, 30′ W of c/l Marsdale Road	*	BEFORE THE
(2001-2035 Lynch Road (Bear Creek)	*	ZONING COMMISSIONER
12th Election District	*	OF
7th Council District	*	BALTIMORE COUNTY
Hidden Cove Apartments, LLC, Owners; P & S Homes, Inc., Contract Purchaser	*	Cases Nos. XII-139 & 06-300-SPHA

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before the Hearing Officer/Zoning Commissioner for a combined zoning and development plan approval hearing, pursuant to Baltimore County Code, Section 32-4-230. Pursuant to the development regulations codified in Article 32, Title 4 of the Code, P&S Homes, Inc., requests approval of the three-paged redlined Development Plan (Developer's Exhibit 1-A, 1-B, and 1-C), as well as associated zoning relief for the proposed development of the subject property with 39 townhouse/condominium units. Specifically, Special Hearing relief is requested as follows:

1. In the alternative to the Petition for Variance filed concurrently with this Petition for Special Hearing and pursuant to Section 102.2 of the Baltimore County Zoning Regulations (BCZR) and Page 1-42.1 of the Zoning Commissioner's Policy Manual, the Petitioner requests that the Zoning Commissioner determine that the use division line between proposed dwellings on Lot 2 as shown on the Plan to accompany this Petition is appropriate.
2. Pursuant to Section 102.2 (BCZR) and Page 1-42.1 of the Zoning Commissioner's Policy Manual, the Petitioner requests that the Zoning Commissioner determine that the distance between proposed dwellings on Lot 2 as shown on the Plan to accompany this Petition is appropriate and in conformance with the BCZR.
3. In the alternative to the Petition for Variance filed concurrently with this Petition for Special Hearing and pursuant to Section 504.2 of the BCZR and Page 27 of the

ORDER RECEIVED FOR FILING
Date 3/23/06
By

CMDP, that the Zoning Commissioner determine that the proposed contiguous yards for each unit as shown on the Plan to accompany this Petition are appropriate and in conformance with the BCZR.

4. For such other and further Special Hearing relief as the Zoning Commissioner may require.

Additionally, the Developer/Petitioner requests Variance relief, as follows:

1. In the alternative to the Petition for Special Hearing filed concurrently with this Petition for Variance, to permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet, pursuant to Sections 102.2 and 1B01.2.C.1 of the BCZR for proposed dwelling on Lot 2;
2. In the alternative to the Petition for Special Hearing filed concurrently with this Petition for Variance and/or if determined necessary by the Zoning Commissioner, to permit as little as 0 sq. feet contiguous private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required by Section 504.2 (BCZR), Page 27 (CMDP);
3. To permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet, pursuant to Section 301 of the BCZR for proposed dwellings on Lot 2;
4. To permit a front setback of 13 feet in lieu of the required 25 feet pursuant to Section 1B01.2.C.1 of the BCZR for proposed unit #1 on Lot 2;
5. To permit a side setback of 8 feet in lieu of the required 15 feet pursuant to Section 1B01.2.C.1 of the BCZR for proposed unit #5 of Lot 2; and
6. For such other and further Variance relief as the Zoning Commissioner may require.

The proposed development and requested zoning relief are more particularly shown on the Development Plan (Exhibit 1-A, 1-B &1-C).

This proposal has been reviewed in accordance with the development review regulations codified in Article 32 of the Baltimore County Code. The process described therein is initiated by the filing of a concept plan, which is a schematic representation of the proposed development. The

CMDP, that the Zoning Commissioner determine that the proposed contiguous yards for each unit as shown on the Plan to accompany this Petition are appropriate and in conformance with the BCZR.

4. For such other and further Special Hearing relief as the Zoning Commissioner may require.

Additionally, the Developer/Petitioner requests Variance relief, as follows:

1. In the alternative to the Petition for Special Hearing filed concurrently with this Petition for Variance, to permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet, pursuant to Sections 102.2 and 1B01.2.C.1 of the BCZR for proposed dwelling on Lot 2;
2. In the alternative to the Petition for Special Hearing filed concurrently with this Petition for Variance and/or if determined necessary by the Zoning Commissioner, to permit as little as 0 sq. feet contiguous private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required by Section 504.2 (BCZR), Page 27 (CMDP);
3. To permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet, pursuant to Section 301 of the BCZR for proposed dwellings on Lot 2;
4. To permit a front setback of 13 feet in lieu of the required 25 feet pursuant to Section 1B01.2.C.1 of the BCZR for proposed unit #1 on Lot 2;
5. To permit a side setback of 8 feet in lieu of the required 15 feet pursuant to Section 1B01.2.C.1 of the BCZR for proposed unit #5 of Lot 2; and
6. For such other and further Variance relief as the Zoning Commissioner may require.

The proposed development and requested zoning relief are more particularly shown on the Development Plan (Exhibit 1-A, 1-B &1-C).

This proposal has been reviewed in accordance with the development review regulations codified in Article 32 of the Baltimore County Code. The process described therein is initiated by the filing of a concept plan, which is a schematic representation of the proposed development. The

concept plan is submitted for review at a conference held by and between representatives of the Developer and the County at a Concept Plan Conference (CPC), which in this case was conducted on October 4, 2004. Thereafter, as required, a Community Input Meeting (CIM) is conducted during evening hours at a public facility in the vicinity of the proposed development. The CIM provides an opportunity for residents of the locale to review and offer comment on the proposal. The CIM for this project was held on November 14, 2004 at the Sandy Plains Elementary School. Subsequently, a development plan is submitted for review and comment at a conference held again between the Developer and County agency representatives. Often the development plan has been revised to incorporate changes suggested at the CPC and/or CIM. The Development Plan Conference (DPC) in this case was held on December 14, 2005. The Hearing Officer's Hearing was conducted over two hearing days; namely, January 6, 2006 and February 16, 2006.

Appearing at one or more of the hearing dates in support of the project was Thomas G. Scherr, principal of P&S Homes, Inc., Petitioner/Developer. Also present was Richard E. Matz, a Professional Engineer with Colbert, Matz & Rosenfelt, Inc., the consultants who prepared the development plan. The Petitioner was represented by Lawrence E. Schmidt, Esquire of Gildea & Schmidt, LLC. There were no Protestants or other interested persons from the surrounding community who appeared on either hearing date.

Appearing at one or both of the hearing dates on behalf of the reviewing agencies of Baltimore County were Jan Cook from the Department of Recreation and Parks, William Minor from the Bureau of Land Acquisition, Curtis Murray from the Office of Planning, John Alexander from the Zoning Division of the Department of Permits and Development Management ("PDM"), Dennis Kennedy from Developer's Plans Review of PDM, Bruce Seeley and Jeff Livingston from the Department of Environmental Protection and Resource Management ("DEPRM") and Walt Smith and Colleen Kelley, Project Managers.

The subject property under consideration is approximately 48 acres in area and is divided into two parcels, designated with separate tax map parcel numbers (i.e., 301 and 64). Parcel No. 301 contains 30.7 acres and Parcel No. 64 contains 17.48 acres. The Developer proposes to re-

ORDER RECEIVED/FILING DATE 3/23/06

subdivide and reconfigure the property into two new lots. Lot 1 will contain the area of the proposed new development, and will to be approximately 10.23 acres in area. Lot 1 contains much of that previous area designated as Parcel No. 64. Lot 2 contains an area of existing development (to be described hereinafter) and is proposed to be 35.7 acres. Lot No. 2 contains the original area of Parcel No. 301 and a portion of Parcel No. 64. These parcel and proposed lot lines are more particularly shown on the Plan.

The tract is split-zoned DR-16 and DR 5.5. The zoning line is located essentially along the line of division that presently separates the property into two parcels. Parcel 301 is zoned DR-16, and contains an existing apartment complex known as the Key Landing Apartments, which were built in the mid-1960s. There are 504 total units contained within a series of three and four story buildings.

Proposed Lot 2 (Parcel 64) is primarily zoned DR 5.5 and is proposed for development with 39 new townhouse/condominium units. Proposed Lot 2 contains the waterfront portion/buffer area associated with the overall tract. In this regard, the property is a waterfront property immediately adjacent to Lynch Cove and Bear Creek in the Dundalk/Inverness community of eastern Baltimore County. The property is located at the end of a peninsula adjacent to the terminus of Lynch Road. In addition to the existing apartment complex, much of the surrounding neighborhood was developed many years ago as a rowhouse/townhouse community.

Pursuant to Sections 32-4-227 and 228 of the Baltimore County Code, which regulates the conduct at the Hearing Officer's Hearing, I am required to first identify any unresolved agency comments or issues. In this regard, the Developer indicated at the onset of the hearing that the plan was in compliance with all appropriate regulations, rules, and requirements for development in Baltimore County, except for certain issues defined by the Office of Planning and DEPRM, as more particularly described below. This representation was confirmed by the County agencies represented at the hearing. Specifically, Mr. Cook, from the Department of Recreation and Parks, indicated that the plan showed proposed areas of open space to be dedicated to Baltimore County that exceeded the minimum open space requirements and that there were no open issues from his

subdivide and reconfigure the property into two new lots. Lot 1 will contain the area of the proposed new development, and will to be approximately 10.23 acres in area. Lot 1 contains much of that previous area designated as Parcel No. 64. Lot 2 contains an area of existing development (to be described hereinafter) and is proposed to be 35.7 acres. Lot No. 2 contains the original area of Parcel No. 301 and a portion of Parcel No. 64. These parcel and proposed lot lines are more particularly shown on the Plan.

The tract is split-zoned DR-16 and DR 5.5. The zoning line is located essentially along the line of division that presently separates the property into two parcels. Parcel 301 is zoned DR-16, and contains an existing apartment complex known as the Key Landing Apartments, which were built in the mid-1960s. There are 504 total units contained within a series of three and four story buildings.

Proposed Lot 2 (Parcel 64) is primarily zoned DR 5.5 and is proposed for development with 39 new townhouse/condominium units. Proposed Lot 2 contains the waterfront portion/buffer area associated with the overall tract. In this regard, the property is a waterfront property immediately adjacent to Lynch Cove and Bear Creek in the Dundalk/Inverness community of eastern Baltimore County. The property is located at the end of a peninsula adjacent to the terminus of Lynch Road. In addition to the existing apartment complex, much of the surrounding neighborhood was developed many years ago as a rowhouse/townhouse community.

Pursuant to Sections 32-4-227 and 228 of the Baltimore County Code, which regulates the conduct at the Hearing Officer's Hearing, I am required to first identify any unresolved agency comments or issues. In this regard, the Developer indicated at the onset of the hearing that the plan was in compliance with all appropriate regulations, rules, and requirements for development in Baltimore County, except for certain issues defined by the Office of Planning and DEPRM, as more particularly described below. This representation was confirmed by the County agencies represented at the hearing. Specifically, Mr. Cook, from the Department of Recreation and Parks, indicated that the plan showed proposed areas of open space to be dedicated to Baltimore County that exceeded the minimum open space requirements and that there were no open issues from his

Department. Additionally, Mr. Minor indicated that there were no open issues from the Bureau of Land Acquisition, as did Mr. Alexander, on behalf the Zoning Division of PDM. Dennis Kennedy also testified that there were no outstanding issues, insofar as the Development Plans Review Division, and that the project met all relevant Public Works standards.

On the first hearing date, Mr. Murray, of the Office of Planning, indicated that there were four relatively minor details within the Pattern Book (County Exhibit 1) that were unresolved. The Pattern Book contains architectural drawings and elevation details of the proposed units. Specifically, the open issues related to the specific design details of the proposed rear decks, HVAC and utility metering systems, mailboxes, and wing walls. "Wing walls" are an architectural feature located adjacent to the pathway that provides pedestrian access throughout the site. They are constructed to accommodate grade changes in that portion of the site.

When the hearing reconvened on February 16, 2006, the Petitioner offered an amended Development Plan comment from Mr. Murray (Petitioner's Exhibit 2), dated February 15, 2006. This amended Development Plan comment states that additional information was submitted to the Office of Planning and that the four issues identified above had been reviewed by that Department and resolved. The comment concludes that the Office of Planning "finds that the Developer's Pattern Book for Bear Creek Towne, PDM II-139, is consistent with the spirit and intent of Section 260 of the Baltimore County Zoning Regulations." Thus, with the resolution of this issue, there were no open issues from the Office of Planning.

Additionally, there were two open issues identified by the DEPRM on January 6, 2006. First, it was noted that the subject property requires a variation of standards, pursuant to Section 32-4-231(a) of the Baltimore County Code. That Section states that any request for variation of standards from the Chesapeake Bay Critical Area requirements must be referred to the Baltimore County Planning Board for review, public hearing and recommendation. In this regard, the undersigned Hearing Officer referred this matter to the Planning Board on or about December 12, 2005. Although the request for Variation of Standards was referred to the Planning Board prior to the first hearing date on January 6, 2006, the Planning Board did not complete its review until after

ORDER RECEIVED FOR FILING
Date 3/23/06
By

that date. Specifically the Planning Board entertained a presentation from the applicant and DEPRM as to the variation of standards on January 19, 2006 and conducted a public hearing on February 2, 2006. Following that public hearing, the Board voted unanimously to recommend approval of the variation of standards, with certain conditions (See Exhibit 4).

The other issue raised at the initial hearing by DEPRM relates to the proposed stormwater management plan for this project. That issue remained unresolved on the second hearing date, as certain technical computations and submissions had not been submitted to and/or reviewed by DEPRM. By agreement of the parties, the record of the case remained open to allow DEPRM an opportunity to fully review Developer's stormwater management submission. Ultimately, an amended Development Plan comment, dated March 23, 2006, was submitted by DEPRM advising that the stormwater management plan had been fully reviewed and was approved. Additionally, subsequent to the second hearing date, further correspondence was received from DEPRM's Environmental Impact Review section. That correspondence confirmed that the plan had been reviewed for compliance with all environmental impact regulations and stated that the Plan met those requirements.

With the resolution of these issues, it is clear that there are no further outstanding development plan issues identified by any party. The testimony offered by the Developer indicated that there was significant community input and support for the proposal and that the plan had been subject to review at various community meetings. As noted above, no one appeared in opposition at either of the hearings before the undersigned and it was indicated that the hearing for the variation of standards at the Planning Board was unopposed. For all these reasons, and based upon the oral testimony and written documentary evidence presented at the hearing, I am persuaded that there are no outstanding issues and that the plan complies with all Development Plan requirements and regulations. Thus, the redlined Development Plan shall be approved.

Turning to the requested zoning relief, the Petitioner filed both a Petition for Variance and a Petition for Special Hearing as described above. Moreover, it is to be noted that there was a prior zoning case (06-107-SPHA) that involved this property before Deputy Commissioner John V.

that date. Specifically the Planning Board entertained a presentation from the applicant and DEPRM as to the variation of standards on January 19, 2006 and conducted a public hearing on February 2, 2006. Following that public hearing, the Board voted unanimously to recommend approval of the variation of standards, with certain conditions (See Exhibit 4).

The other issue raised at the initial hearing by DEPRM relates to the proposed stormwater management plan for this project. That issue remained unresolved on the second hearing date, as certain technical computations and submissions had not been submitted to and/or reviewed by DEPRM. By agreement of the parties, the record of the case remained open to allow DEPRM an opportunity to fully review Developer's stormwater management submission. Ultimately, an amended Development Plan comment, dated March 23, 2006, was submitted by DEPRM advising that the stormwater management plan had been fully reviewed and was approved. Additionally, subsequent to the second hearing date, further correspondence was received from DEPRM's Environmental Impact Review section. That correspondence confirmed that the plan had been reviewed for compliance with all environmental impact regulations and stated that the Plan met those requirements.

With the resolution of these issues, it is clear that there are no further outstanding development plan issues identified by any party. The testimony offered by the Developer indicated that there was significant community input and support for the proposal and that the plan had been subject to review at various community meetings. As noted above, no one appeared in opposition at either of the hearings before the undersigned and it was indicated that the hearing for the variation of standards at the Planning Board was unopposed. For all these reasons, and based upon the oral testimony and written documentary evidence presented at the hearing, I am persuaded that there are no outstanding issues and that the plan complies with all Development Plan requirements and regulations. Thus, the redlined Development Plan shall be approved.

Turning to the requested zoning relief, the Petitioner filed both a Petition for Variance and a Petition for Special Hearing as described above. Moreover, it is to be noted that there was a prior zoning case (06-107-SPHA) that involved this property before Deputy Commissioner John V.

Murphy in 2005. In his Opinion and Order dated November 28, 2005, Deputy Commissioner Murphy approved certain requests presented through a Petition for Special Hearing relating to this property. That Special Hearing relief confirmed that more than sufficient zoning density (both within each separate parcel and the overall tract) is available to support the existing apartment complex, as well as the proposed 39 condominium units. The Order also confirmed that the current DR 5.5 regulations should be applied as they relate to use, bulk, and area standards for proposed development, and allowed a small portion of the proposed development to be constructed in a Tidal Flood Zone A. The Order also amended the original plan, which was approved by Baltimore County in 1966 to allow construction of the existing apartment complex. Finally, the Order confirmed that no specifically designated parking spaces were required under Section 409 of the BCZR to accommodate the proposed community pier, and that the Residential Transition Area standards set forth in Article 1B01 of the BCZR are not applicable to this project. In essence, Deputy Commissioner Murphy's Order established the ground rules for the proposed Development Plan and resolved such essential issues as density, the applicable zoning regulations, etc. That Order was not appealed and is final.

In the instant case, certain relief requested is pleaded in the alternative. Specifically, Item 1 in the Petition for Variance and Items 1 and 2 in the Petition for Special Hearing both seek to allow the proposed units to be located, in relationship from one to another, as shown on the plan. That is, the Petitioner seeks variance relief to permit as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet. In the alternative, Special Hearing relief is requested to *determine the appropriateness* of the proposed use division line between proposed dwellings and to approve the proposed distance between certain units.

As more particularly shown on the plan, certain condominium units facing each other are as little as 36 feet from one another. As the proposed community is a condominium regime, there will be no lot lines and the open area between units will be a common area and will not be owned by the owner of a particular unit. In prior similar circumstances, the Zoning Office has determined that notwithstanding the absence of any lot lines and privately owned yard areas, separate units

ORDER RECEIVED FOR FILING
9/23/16

should be required to meet the setback to lot line standards applied to non-condominium development. (*See* Section 102.2 and 1B01.2.C.1 of the Baltimore County Zoning Regulations). Specifically, in the DR 5.5 zone, the Zoning Office has applied the requisite 25-foot setback distance to a lot line. As noted above, several of the units are as close as 36 feet apart, thus, under this interpretation, a front yard setback of 18 feet would be provided to each unit. Thus, variance relief would be required to permit a 7-foot less "lot line setback" than required.

Although such an application of the BCZR is reasonable, it is emphasized that in this condominium regime there are no lot lines, and that the line drawn establishing each unit's "yard" is not a property line, per se, but rather a "line of division" between units/uses. Page 1-42.1 of the Zoning Commissioner's Policy Manual provides clarification of the application of Section 102.2 of the BCZR. Therein, it is provided that, "the Zoning Commissioner may require that a line of division, either a lease line or a zoning use division line, between each use be shown on the Plat." Further, the Manual provides that the implementation of zoning use division lines "may be subject to a Special Hearing at the discretion of the Zoning Commissioner." Thus, the threshold issue is whether relief in this instance is required through a Petition for Special Hearing, or a Petition for Variance.

If proceeding under the Petition for Variance, I would find that variance relief is warranted. This property is surely unique, given its unusual configuration and shape and the significant environmental constraints and features that are associated therewith. Additionally, I find a practical difficulty would result if the Petitioner's relief were denied. The proposed development is significantly under density (approximately only 40% of the density available will be utilized). Thus, the proposed development is reasonable and does not overcrowd the property. Finally, it is clear that the proposal will not be detrimental to any adjacent properties. For all these reasons, I believe that the Petitioner would be entitled to a granting of variance relief.

Nevertheless, in this case, I believe that the more appropriate approach is for a finding through the Petition for Special Hearing that the location of the zoning use division line is appropriate. Pursuant to the Petition for Special Hearing, consideration of the issue in this manner

should be required to meet the setback to lot line standards applied to non-condominium development. (*See* Section 102.2 and 1B01.2.C.1 of the Baltimore County Zoning Regulations). Specifically, in the DR 5.5 zone, the Zoning Office has applied the requisite 25-foot setback distance to a lot line. As noted above, several of the units are as close as 36 feet apart, thus, under this interpretation, a front yard setback of 18 feet would be provided to each unit. Thus, variance relief would be required to permit a 7-foot less "lot line setback" than required.

Although such an application of the BCZR is reasonable, it is emphasized that in this condominium regime there are no lot lines, and that the line drawn establishing each unit's "yard" is not a property line, per se, but rather a "line of division" between units/uses. Page 1-42.1 of the Zoning Commissioner's Policy Manual provides clarification of the application of Section 102.2 of the BCZR. Therein, it is provided that, "the Zoning Commissioner may require that a line of division, either a lease line or a zoning use division line, between each use be shown on the Plat." Further, the Manual provides that the implementation of zoning use division lines "may be subject to a Special Hearing at the discretion of the Zoning Commissioner." Thus, the threshold issue is whether relief in this instance is required through a Petition for Special Hearing, or a Petition for Variance.

If proceeding under the Petition for Variance, I would find that variance relief is warranted. This property is surely unique, given its unusual configuration and shape and the significant environmental constraints and features that are associated therewith. Additionally, I find a practical difficulty would result if the Petitioner's relief were denied. The proposed development is significantly under density (approximately only 40% of the density available will be utilized). Thus, the proposed development is reasonable and does not overcrowd the property. Finally, it is clear that the proposal will not be detrimental to any adjacent properties. For all these reasons, I believe that the Petitioner would be entitled to a granting of variance relief.

Nevertheless, in this case, I believe that the more appropriate approach is for a finding through the Petition for Special Hearing that the location of the zoning use division line is appropriate. Pursuant to the Petition for Special Hearing, consideration of the issue in this manner

allows the Zoning Commissioner to consider the overall scheme of the development in context to existing uses and the character of the property in and of itself. Thus, although I find zoning variance is warranted, I will dismiss that request for variance relief in this instance and approve the location of the units through the Petition for Special Hearing. I find that this layout is appropriate, particularly given the character of the area, the environmental features of the site, etc.

The second request is also pleaded in the alternative. Specifically, Item 2 of the Petition for Variance seeks as little as zero (0) feet of private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required by Section 504.2 of the BCZR and as stated on page 27 of the Comprehensive Manual of Development Policies ("CMDP"). In the alternative, Item 3 in the Petition for Special Hearing requests that the Zoning Commissioner determine that the proposed contiguous yards for each unit as shown on the plan to accompany this Petition are appropriate and in conformance with the BCZR. The fundamental question presented here is whether the yard area as proposed satisfies the regulation. As more particularly shown on the plan, each individual unit does in fact provide for an individual yard area in excess of 500 feet; however, the yard area includes a paved surface that is part of the individual driveway/parking pad for each unit. Due to the flood plain and waterfront nature of this property, individual living space within each unit will be built at a higher elevation, and parking will be underneath the units. Access to this parking will be through the "yard area" of each individual unit. Examination of the CMDP and zoning regulations nowhere discloses a requirement that yard areas be in lawn and cannot be paved. Moreover, as stated above, the condominium owners will not own the "yard area" as it is under common ownership. After review of the overall property and layout, I am persuaded that relief should be granted, through the Petition for Special Hearing. The proposed area of development has been clustered, to ensure minimum disturbance and environmental impact. Additionally, a large area of the site will remain an environmental buffer and will be replanted and/or left undisturbed. Certainly, it is a sound environmental practice in this case to cluster the impervious surfaces necessary to provide the dwellings, vehicular access, parking, etc. Potential residents of this condominium regime will have the opportunity to use much of the open area, which remains

ORDER RECEIVED FOR FILING
Date 2/23/00
By

undisturbed on this property, as well as the Baltimore County park immediately adjacent to the site for passive and active recreational purposes. As noted above, more than required open space is provided to the existing apartment complex containing picnic and playground areas that will remain. The property layout here is unique and is driven by the environmental constraints associated with this property. Just as a deck or patio may be considered an area or part of a yard for a dwelling, I find, pursuant to the Special Hearing, that the proposed contiguous yards for each unit as shown on the Plan are appropriate and in conformance with the Baltimore County Zoning Regulations. Thus, Item 3 within the Petition for Variance is determined to be moot.

Item 4 within the Petition for Variance relates to a single unit (Unit 1). Item 5 also relates to a single unit (Unit 2). The Variances requested for these two units relate to respective front and side yard setbacks. A slight reduction from the requirement is requested. These are generated due to the existing configuration of the terminus of Lynch Road and the environmentally sensitive areas that mandate a cluster of the proposed layout. An examination of the Plan shows the obvious justification for these requests. In my judgment, the Petition for Variance should be granted for these two units as sufficient testimony and evidence was offered to satisfy the requirements of Section 307 of the BCZR and the case law.

For the above reasons, I will, therefore, grant Development Plan approval, as well as Special Hearing and Variance relief, as necessary. This is an appropriate redevelopment within an older area of Baltimore County. As indicated at the hearing, the proposed plan provides an opportunity for renaissance in the Dundalk area and is widely supported by the community. The design of the plan is largely driven by environmental constraints and has been carefully reviewed by the Department of Environmental Protection and Resource Management, as well as the Planning Board, in its evaluation of the requested variation of standards. The Development Plan and Petitions for zoning relief will, therefore, be granted, as more specifically stated herein above.

Pursuant to the zoning and development regulations of Baltimore County as contained within the B.C.Z.R. and Title 4 of the B.C.C., the three paged, redlined development plan (Developer's Exhibits 1A, 1B and 1C) shall be approved consistent with the comments contained

undisturbed on this property, as well as the Baltimore County park immediately adjacent to the site for passive and active recreational purposes. As noted above, more than required open space is provided to the existing apartment complex containing picnic and playground areas that will remain. The property layout here is unique and is driven by the environmental constraints associated with this property. Just as a deck or patio may be considered an area or part of a yard for a dwelling, I find, pursuant to the Special Hearing, that the proposed contiguous yards for each unit as shown on the Plan are appropriate and in conformance with the Baltimore County Zoning Regulations. Thus, Item 3 within the Petition for Variance is determined to be moot.

Item 4 within the Petition for Variance relates to a single unit (Unit 1). Item 5 also relates to a single unit (Unit 2). The Variances requested for these two units relate to respective front and side yard setbacks. A slight reduction from the requirement is requested. These are generated due to the existing configuration of the terminus of Lynch Road and the environmentally sensitive areas that mandate a cluster of the proposed layout. An examination of the Plan shows the obvious justification for these requests. In my judgment, the Petition for Variance should be granted for these two units as sufficient testimony and evidence was offered to satisfy the requirements of Section 307 of the BCZR and the case law.

For the above reasons, I will, therefore, grant Development Plan approval, as well as Special Hearing and Variance relief, as necessary. This is an appropriate redevelopment within an older area of Baltimore County. As indicated at the hearing, the proposed plan provides an opportunity for renaissance in the Dundalk area and is widely supported by the community. The design of the plan is largely driven by environmental constraints and has been carefully reviewed by the Department of Environmental Protection and Resource Management, as well as the Planning Board, in its evaluation of the requested variation of standards. The Development Plan and Petitions for zoning relief will, therefore, be granted, as more specifically stated herein above.

Pursuant to the zoning and development regulations of Baltimore County as contained within the B.C.Z.R. and Title 4 of the B.C.C., the three paged, redlined development plan (Developer's Exhibits 1A, 1B and 1C) shall be approved consistent with the comments contained

herein. In addition, the relief requested within the Petitions for Special Hearing and Variance shall be granted in part, and dismissed in part, all being subject to the restrictions and conditions set forth below.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County, this 23rd day of March 2006, that the three-paged, redlined development plan for Bear Creek, identified herein as Developer's Exhibits 1A, 1B and 1C, be and is hereby APPROVED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking approval, pursuant to Section 102.2 (BCZR) and Page 1-42.1 of the Zoning Commissioner's Policy Manual, that the use division line between proposed dwellings on Lot 2 and the distance between proposed dwellings on Lot 2 as shown on the Plan are appropriate and in conformance with the BCZR; and as such, is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking approval, pursuant to Section 504.2 of the BCZR and Page 27 of the CMDP, that the proposed contiguous yards for each unit as shown on the Plan are appropriate and in conformance with the BCZR; and as such, is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1B01.2.C.1 of the BCZR to permit a front setback of 13 feet in lieu of the required 25 feet for proposed Unit #1 on Lot 2, and a side setback of 8 feet in lieu of the required 15 feet for proposed Unit #5 of Lot 2, in accordance with Developer's Exhibits 1A, 1B and 1C, be and is hereby GRANTED, subject to the following condition:

1. The Developer/Petitioner is permitted to proceed; however, the Developer/Petitioner is hereby made aware that doing so shall be at its own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein could be rescinded.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief, pursuant to Sections 102.2 and 1B01.2.C.1 of the BCZR to permit a setback of as little as 18 feet from a

dwelling to a use division line in lieu of the required 25 feet, for proposed dwelling on Lot 2; to permit as little as 0 sq. feet contiguous private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required by Section 504.2 (BCZR), Page 27 (CMDP); and, to permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet, pursuant to Section 301 of the BCZR for proposed dwellings on Lot 2, be and are hereby DISMISSED AS MOOT.

Any appeal of this Order shall be taken in accordance with Sections 32-3-401 and 32-4-281 of the Baltimore County Code.

WILLIAM J. WISEMAN, III
Zoning Commissioner/Hearing Officer for
Baltimore County

dwelling to a use division line in lieu of the required 25 feet, for proposed dwelling on Lot 2; to permit as little as 0 sq. feet contiguous private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required by Section 504.2 (BCZR), Page 27 (CMDP); and, to permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet, pursuant to Section 301 of the BCZR for proposed dwellings on Lot 2, be and are hereby DISMISSED AS MOOT.

Any appeal of this Order shall be taken in accordance with Sections 32-3-401 and 32-4-281 of the Baltimore County Code.

WILLIAM J. WISEMAN, III
Zoning Commissioner/Hearing Officer for
Baltimore County

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

March 24, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
300 E. Baltimore Street, Suite 1440
Baltimore, Maryland 21202

RE: **DEVELOPMENT PLAN HEARING and**
PETITIONS FOR SPECIAL HEARING & VARIANCE
S/S Lynch Road, 30' W of the c/l Marsdale Road
(2001 – 2035 Lynch Road – Bear Creek)
12th Election District – 7th Council District
Hidden Cove Apartments, LLC, Owner; P & S Homes, Contract Purchaser/Developer
Cases Nos. XII-139 & 06-300-SPHA

Dear Mr. Schmidt:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The development plan has been approved and the Petitions for Special Hearing and Variance granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner/Hearing Officer
for Baltimore County

WJW:bjs

cc: Mr. Thomas G. Scherr, P & S Homes, Inc.
701 Fern Valley Circle, Baltimore, Md. 21228
Mr. Richard E. Matz, Colbert Matz Rosenfelt, Inc.
2835 Smith Avenue, Suite G, Baltimore, Md. 21209
Mr. Walt Smith, DPDM; DEPRM; DPW; OP; R&P; People's Counsel; Case File

CBCA / FLOOD

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at Bear Creek (Parcels 301 + 64) 2001-2035 Lynch Road
which is presently zoned DR 5.5 and DR 16

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

Please see attached.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

P&S Homes, Inc.
Name - Type or Print

Thomas G Shea
Signature Tom Scherr

701 Fern Valley Circle (410)-744-8589
Address Telephone No.

Baltimore, MD 21228
City State Zip Code

Legal Owner(s):

Hidden Cove Apartments, LLC
Name - Type or Print

Steve Michael, Authorized Representative
Signature

Name - Type or Print

Signature

1950 Old Gallows Road, 6th Floor (703) 902-2000
Address Telephone No.

Vienna, VA 22782-3933
City State Zip Code

Attorney For Petitioner:

Lawrence E. Schmidt
Name - Type or Print

Signature Lawrence E. Schmidt

Gildea & Schmidt, LLC
Company

300 East Lombard Street, Suite 1440 410-234-0070
Address Telephone No.

Baltimore MD 21202
City State Zip Code

Representative to be Contacted:

Richard Matz (Colbert, Matz, Rosenfelt Inc.)
Name

2835 Smith Avenue, Suite G (410) 653-3838
Address Telephone No.

Baltimore, MD 21209
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By TJS Date 12-09-05

ORDER RECEIVED FOR FILING
Date 3/23/06
By

Case No. 06-300-SPHA

REVISED 9/15/98

ATTACHMENT TO PETITION FOR SPECIAL HEARING

1. In the alternative to the Petition for Variance filed concurrently with this Petition for Special Hearing and pursuant to Section 102.2 (BCZR) and Page 1-42.2 of the Zoning Commissioner's Policy Manual, the Petitioner requests that the Zoning Commissioner determine that the use division line between proposed dwellings on Lot 2 as shown on the Plan to accompany this Petition is appropriate.
2. Pursuant to Section 102.2 (BCZR) and Page 1-42.2 of the Zoning Commissioner's Policy Manual, the Petitioner requests that the Zoning Commissioner determine that the distance between proposed dwellings on Lot 2 as shown on the Plan to accompany this Petition is appropriate and in conformance with the BCZR.
3. In the alternative to the Petition for Variance filed concurrently with this Petition for Special Hearing and pursuant to Section 504.2 of the BCZR and Page 27 of the CMDP, that the Zoning Commissioner determine that the proposed contiguous yards for each unit as shown on the Plan to accompany this Petition are appropriate and in conformance with the BCZR.
4. For such other and further Special Hearing relief as the Zoning Commissioner may require.

RECEIVED FOR FILING
Date 3/23/96

CBCA / FLOOD

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at: Bear Creek (Parcels 301 + 64) 2001-2035 Lynch Road

which is presently zoned: DR 5.5 and DR 16

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s):

Please see attached.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

To be presented at hearing.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

P&S Homes, Inc.
Name - Type or Print

Signature Tom Scherr

701 Fern Valley Circle (410) 744-8589
Address Telephone No.

Baltimore, MD 21228
City State Zip Code

Legal Owner(s):

Hidden Cove Apartments, LLC
Name - Type or Print

Steve Michael, Authorized Representative
Signature

Name - Type or Print

Signature

1950 Old Gallows Road, 6th Floor (703) 902-2000
Address Telephone No.

Vienna, VA 22782-3933
City State Zip Code

Attorney For Petitioner:

Lawrence E. Schmidt
Name - Type or Print

Signature

Gildea & Schmidt, LLC
Company

300 East Lombard Street, Suite 1440 410-234-0070
Address Telephone No.

Baltimore MD 21202
City State Zip Code

Representative to be Contacted:

Richard Matz (Colbert, Matz, Rosenfelt Inc.)
Name

2835 Smith Avenue, Suite G (410) 653-3838
Address Telephone No.

Baltimore, MD 21209
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By _____ Date 12-29-05

Case No. OG 300 SPUA

ORDER RECEIVED FOR FILING
Date 3/23/06
By

REV 9/15/98

ATTACHMENT TO PETITION FOR VARIANCE

1. In the alternative to the Petition for Special Hearing filed concurrently with this Petition for Variance, to permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet, pursuant to Sections 102.2 and 1B01.2.C.1 of the BCZR for proposed dwelling on Lot 2;
2. In the alternative to the Petition for Special Hearing filed concurrently with this Petition for Variance and/or if determined necessary by the Zoning Commissioner, to permit as little as 0 sq. feet contiguous private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required by Section 504.2 (BCZR), Page 27 (CMDP);
3. To permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet, pursuant to Section 301 of the BCZR for proposed dwellings on Lot 2;
4. To permit a front setback of 13 feet in lieu of the required 25 feet pursuant to Section 1B01.2.C.1 of the BCZR for proposed unit #1 on Lot 2;
5. To permit a side setback of 8 feet in lieu of the required 15 feet pursuant to Section 1B01.2.C.1 of the BCZR for proposed unit #5 of Lot 2; and
6. For such other and further Variance relief as the Zoning Commissioner may require.

ORDER RECEIVED FOR FILING
Date 3/23/06
By

OG 300 - SPH A

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners

ZONING DESCRIPTION
BEAR CREEK

Beginning at a point on the south side of Lynch Road, which is 60 feet wide, at the distance of 30 feet, more or less, west of the centerline of Marsdale Road, which is 60 wide, thence the following courses and distances:

S47°41'27"E 237.28;
S48°31'27"E 1423.00;
S57°30'27"E 100.50;
S45°45'27"E 13.13;
A Curve To The Right With A Length Of 73.51' And A Radius Of 50.00
S48°15'27"E 88.97;
N41°44'33"E 27.75;
S11°32'53"E 136.53;
S51°26'33"E 21.28;
S06°27'37"E 36.52;
S35°28'05"E 82.74;
S63°00'11"W 92.67;
S67°53'55"W 105.46;
S56°08'49"W 186.99;
A Curve To The Left With A Length Of 179.65' And A Radius Of 146.45'
A Curve To The Right With A Length Of 98.65' And A Radius Of 65.25
S73°28'17"W 65.78;
A Curve To The Right With A Length Of 59.47' And A Radius Of 70.50'
N58°12'08"W 56.69;
N76°52'44"W 126.96;
N79°27'33"W 108.10;
N68°33'51"W 118.78;
N51°44'53"W 59.62;
N70°33'34"W 78.73;
N59°10'09"W 80.67;
N18°32'32"W 93.33;
N41°41'45"W 133.90;
N04°37'43"W 37.62;
A Curve To The Left With A Length Of 47.38' And A Radius of 50.50
N58°22'50"W 35.70;
N75°17'38"W 104.25;
S86°43'08"W 147.38;
N83°07'03"W 154.07;

2835 Smith Avenue, Suite G Baltimore, Maryland 21209
Telephone: (410) 653-3838 / Facsimile: (410) 653-7953

C-6 300 SPUA

ZONING DESCRIPTION
BEAR CREEK
PAGE 2

N74°21'02"W 128.32;
S59°28'40"W 29.83;
N83°03'45"W 129.84;
N68°42'00"W 171.31;
N54°00'42"W 79.90;
N30°12'53"E 467.04, thence
N30°12'50"E 980.19 to the Point of Beginning.

As recorded in Deed Liber 13334, folio 306, and containing 48.799 acres. Also known as Hidden Cove Apartments and located in the 12th Election District.

STATE OF MARYLAND
RICHARD BARL MATZ
No. 13203
PROFESSIONAL ENGINEER

Dec 8, 2005

PC 300 SPUA

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 6804

DATE 12 5 05 ACCOUNT R[illegible]

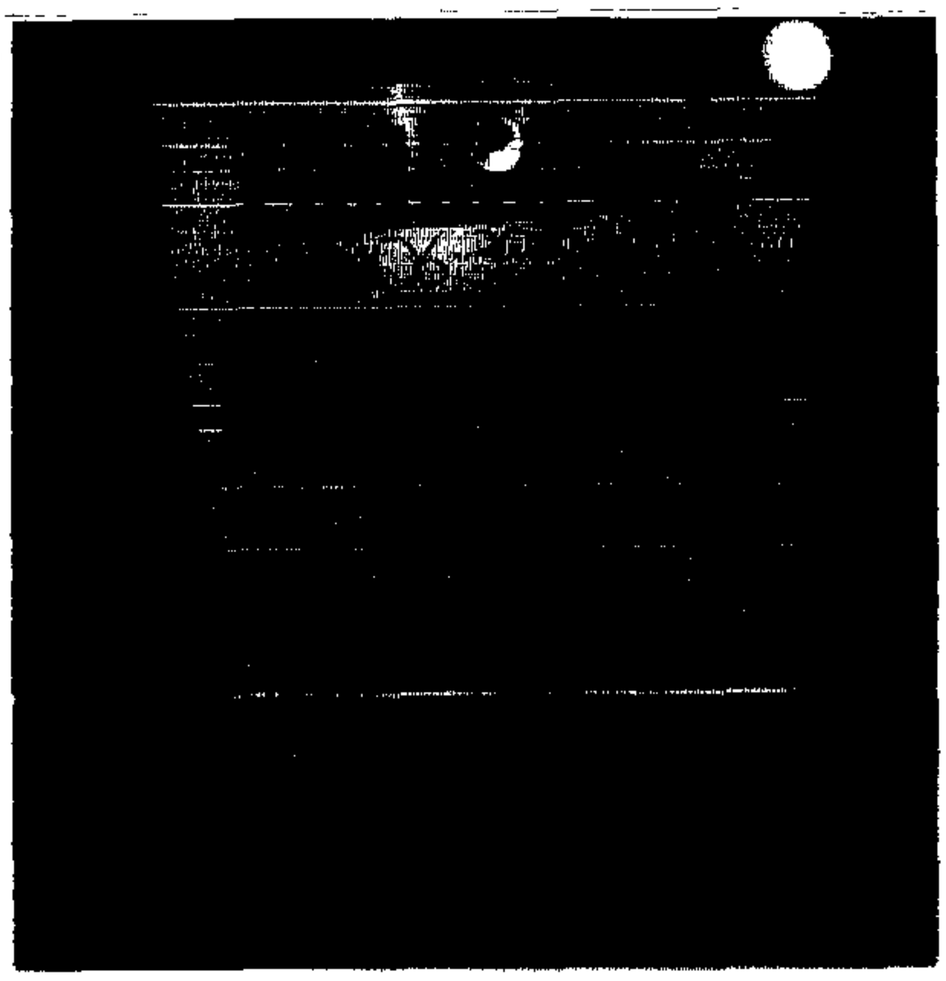
AMOUNT $ 650.00

RECEIVED FROM: Gildea & Schaefer

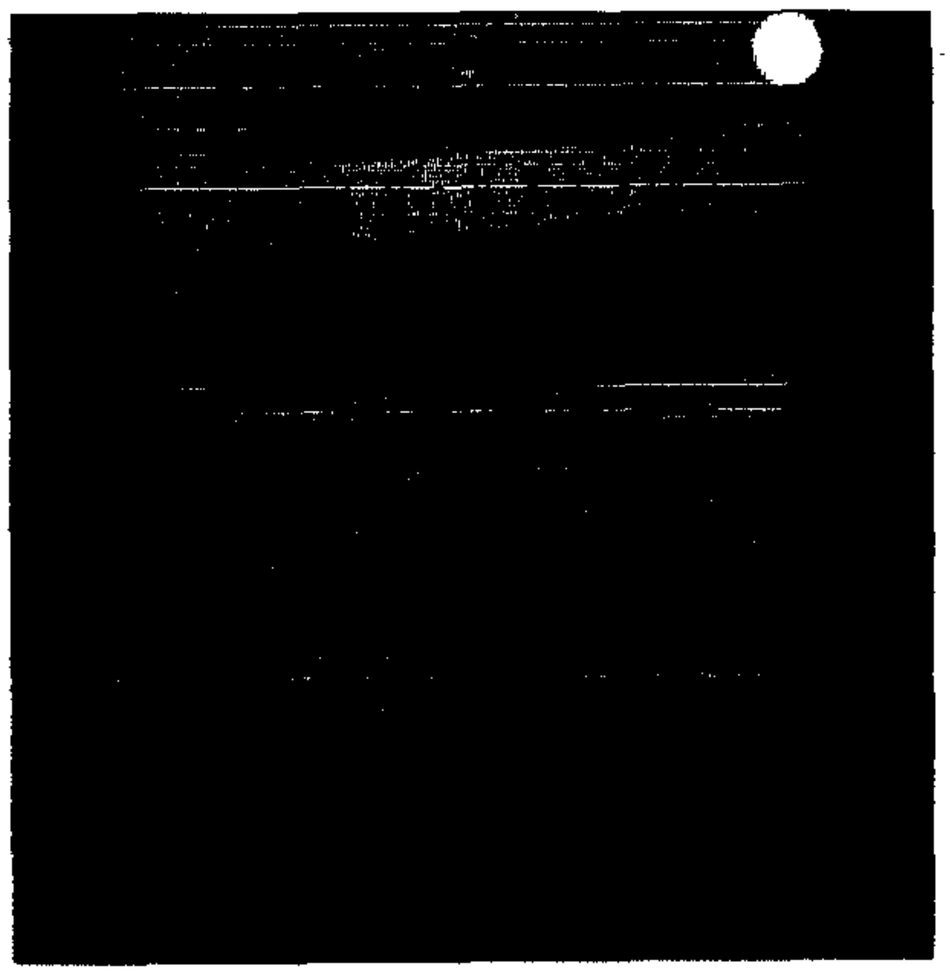
FOR: Variance & Special Hearing

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION



2001-2035 Lynch Rd



2001 - 2035 Lynch Rd

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 06-300-SPHA
2001-2035 Lynch Road (Bear Creek)
South side of Lynch Road, 30 feet west of centerline of Marsdale Road
12th Election District — 7th Councilmanic District
Legal Owner(s): Hidden Cove Apartments, LLC
Contract Purchaser: P & S Homes, Inc.

Special Hearing: to determine that the use division line between proposed dwellings on Lot 2 as shown on the plan *to accompany this petition is appropriate*, to determine that the distance between proposed dwellings on Lot 2 is appropriate and in conformance with the BCZR, to determine that the proposed contiguous yards for each unit as shown on the plan are appropriate and in conformance with the *BCZR and for such other and further* Special Hearing relief as the Zoning Commissioner may require.

Variance: to permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet for proposed dwelling on lot 2, to *permit as little as 0* sq. ft. contiguous property yard area per dwelling on proposed lot 2 in lieu of the 500 feet required, to permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet for proposed dwellings on lot 2, to permit a front setback of 13 feet in lieu of the required 25 feet for proposed unit #1 on lot 2, to permit a side setback of 8 feet in lieu of the required 15 feet and for such other and further Variance relief as the Zoning Commissioner may require.

Hearing: Friday, January 6, 2006 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, contact the Zoning Review Office at (410) 887-3391.
2/432 Dec. 29 79494

CERTIFICATE OF PUBLICATION

12/29, 2005

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/29, 2005

- ☑ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 06-300-SPHA

Petitioner/Developer: P & S HOMES, INC

Date of Hearing/Closing: JAN 6, 2006

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTN: KRISTEN MATTHEWS

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:

2001-2035 LYNCH RD (BEAR CREEK)

The sign(s) were posted on 12-22-05
(Month, Day, Year)

Sincerely,

Robert Black 12-22-05
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

TO: PATUXENT PUBLISHING COMPANY
Tuesday, December 27, 2005 Issue - Jeffersonian

Please forward billing to:
Lawrence Schmidt
Gildea & Schmidt, LLC
300 E. Lombard Street, Ste. 1440
Baltimore, MD 21202

410-234-0070

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 06-300-SPHA
2001-2035 Lynch Road (Bear Creek)
South side of Lynch Road, 30 feet west of centerline of Marsdale Road
12th Election District – 7th Councilmanic District
Legal Owners: Hidden Cove Apartments, LLC
Contract Purchaser: P & S Homes, Inc.

Special Hearing to determine that the use division line between proposed dwellings on Lot 2 as shown on the plan to accompany this petition is appropriate, to determine that the distance between proposed dwellings on Lot 2 is appropriate and in conformance with the BCZR, to determine that the proposed contiguous yards for each unit as shown on the plan are appropriate and in conformance with the BCZR and for such other and further Special Hearing relief as the Zoning Commissioner may require.
Variance to permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet for proposed dwelling on lot 2, to permit as little as 0 sq. ft. contiguous property yard area per dwelling on proposed lot 2 in lieu of the 500 feet required, to permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet for proposed dwellings on lot 2, to permit a front setback of 13 feet in lieu of the required 25 feet for proposed unit #1 on lot 2, to permit a side setback of 8 feet in lieu of the required 15 feet and for such other and further Variance relief as the Zoning Commissioner may require.

Hearing: Friday, January 6, 2006 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Department of Permits and Development Management

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

December 20, 2005

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 06-300-SPHA
2001-2035 Lynch Road (Bear Creek)
South side of Lynch Road, 30 feet west of centerline of Marsdale Road
12th Election District – 7th Councilmanic District
Legal Owners: Hidden Cove Apartments, LLC
Contract Purchaser: P & S Homes, Inc.

Special Hearing to determine that the use division line between proposed dwellings on Lot 2 as shown on the plan to accompany this petition is appropriate, to determine that the distance between proposed dwellings on Lot 2 is appropriate and in conformance with the BCZR, to determine that the proposed contiguous yards for each unit as shown on the plan are appropriate and in conformance with the BCZR and for such other and further Special Hearing relief as the Zoning Commissioner may require. Variance to permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet for proposed dwelling on lot 2, to permit as little as 0 sq. ft. contiguous property yard area per dwelling on proposed lot 2 in lieu of the 500 feet required, to permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet for proposed dwellings on lot 2, to permit a front setback of 13 feet in lieu of the required 25 feet for proposed unit #1 on lot 2, to permit a side setback of 8 feet in lieu of the required 15 feet and for such other and further Variance relief as the Zoning Commissioner may require.

Hearing: Friday, January 6, 2006 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204

Timothy Kotroco
Director

TK:klm

C: Lawrence Schmidt, 300 East Lombard Street, Ste. 1440, Baltimore 21202
Steve Michael, Hidden Cove Apartments, 1950 Old Gallows Rd., 6th Floor, Vienna VA 22782-3933
P&S Homes, Inc., 701 Fern Valley Circle, Baltimore 21228
Richard Matz, 2835 Smith Avenue, Ste. G., Baltimore 21209

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, DECEMBER 22, 2005.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing

Zoning Review will ensure that the legal requirements for advertising are satisfied However, the petitioner is responsible for the costs associated with these requirements The newspaper will bill the person listed below for the advertising This advertising is due upon receipt and should be remitted directly to the newspaper

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number 06-300-SPHA

Petitioner P & S Homes For Hidden Cove Apts

Address or Location 2061-2035 Lynch Rd.

PLEASE FORWARD ADVERTISING BILL TO

Name Mr. L. Schmidt

Address Gilpea & Schmidt
300 E. Lombard St. Suite 1440
Baltimore Md. 21202

Telephone Number 410 234 0070

06 300 SPHA

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

DATE: December 20, 2005

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For December 19, 2005
Item No. 300

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment(s).

The base flood elevation for this site is 9.4 Baltimore County Datum.

The flood protection elevation for this site is 10.4 feet.

In conformance with *Federal Flood Insurance* requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.

The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the *Baltimore County Building Code* must be followed whereby elevation limitations are placed on the lowest floor (*including basements*) of residential (*commercial*) development.

The building engineer shall require a permit for this project.

The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.

Flood-resistant construction shall be in accordance with the requirement of B.O.C.A. International Building Code adopted by the county.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 300-12202005.doc

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Timothy M. Kotroco

FROM: R. Bruce Seeley

DATE: December 23, 2005

SUBJECT: Zoning Item # 06-300-SPHA
Address 2001-2035 Lynch Road
(Bear Creek Townhouses)

Zoning Advisory Committee Meeting of December 19, 2005

_X_ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

_X_ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code).

Additional Comments:

Reviewer: P. Dennis Date: December 20, 2005

S:\Devcoord\ZAC\06-300-SPHA.doc

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

December 19, 2005

ATTENTION: Zoning Review Planners

Distribution Meeting of

Item No. 267, 286, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304 and 305

Pursuant to your request, the above referenced plan(s) have been reviewed by this Office and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

The Fire Department has no comments at this time.
If you have any questions contact my office.

Acting Lt. Warren T. Moffitt
Fire Marshal's Office
410-887-4880
MS-1102F

Cc:file

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DEVELOPMENT PLAN CONFERENCE

TO: Timothy Kotroco, Director - Department of Permits & Development Management

FROM: Arnold F. 'Pat' Keller, III, Director - Office of Planning

DATE: December 21, 2005

PROJECT NAME: Bear Creek Townhouses (New Submittal) – ***Amended Comments***

PROJECT NUMBER: XII-139

PROJECT PLANNER: Curtis Murray

GENERAL INFORMATION:

Applicant Name: P & S Homes, Inc.
701 Fern Valley Circle
Baltimore, MD 21228

Location: E/S Case Road @ SW Corner Lynch Road

Councilmanic District: 7th

Growth Management Area: Community Conservation Area

Zoning: DR 5.5, DR 16

Acres: 48.06± acres

Surrounding Zoning and Land Use:

North:	DR 3.5	Undeveloped
South:	None	Bear Creek
East:	None	Bear Creek
West:	DR 16	Multi-Family Apartments (Hidden Cove Apartments)

Project Proposal:
The applicant proposes 39 townhouse units on 30.41± acres of land zoned DR 16, and 17.65± acres of DR 5.5. Local open space of 41,000± square feet is proposed. The project is located in the tidal floodplain of Bear Creek. The site is currently open space.

History:
Special Hearing (06-107SPH) on density was heard and granted. The zoning variance was withdrawn and refiled.

Other Anticipated Actions and Additional Review Items:

[ ] Special Exception	[X] Special Hearing	[ ] PUD
[X] Variance	[X] Compatibility	[ ] Design Review Panel
[ ] Waiver	[ ] Scenic Route	[ ] Other
[ ] RTA Modification	[X] Referral to Planning Board	

MEETINGS:

1st Concept Plan Conference	04/19/04	1st Community Input Meeting	06/09/04
2nd Concept Plan Conference	10/04/04	2nd Community Input Meeting	11/04/04
Development Plan Conference	12/14/05	Hearing Officer's Hearing	01/06/05
Zoning Advisory Hearing			

SCHOOL IMPACT ANALYSIS:
The Office of Planning has reviewed the School Impact Analysis submitted by the applicant and has determined that the proposed development is in compliance with Section 32-6-103 of the Baltimore County Code.

COMPATIBILITY REPORT:
The Office of Planning has reviewed the Compatibility Report and finds that all 8 objectives are in accordance with Section 32-4-402 of the Baltimore County Code.

PLANNING BOARD:

Variations of Standards for the critical area will be heard by the Planning Board on January 19, 2006.

ZONING ADVISORY COMMITTEE:

Petition: Variance and/or Special Hearing

The Office of Planning supports the requests for Variance, or in the alternative petition for Special Hearing provided the recommendations listed below are met.

RESIDENTIAL PERFORMANCE STANDARDS:
As stated in the concept plan comments of 10/4/2004, this development is subject to Section 260 of the Baltimore County Zoning Regulations. This section requires the Director of the Office of Planning to make a finding to the Hearing Officer for all residential development of four lots or more in Baltimore County that is located within the Urban/Rural Demarcation Line.

The Hearing Officer or the Director of Permits and Development Management, as applicable, shall consider the findings presented by the Director of the Office of Planning or the Director's designee before a development plan is approved.

At this time the Office of Planning is unable to make a finding that the development is consistent with the spirit and intent of Section 260 of the BCZR. Revise the Pattern Book to adhere to the recommendations listed below:

RECOMMENDATIONS:

The Office of Planning has reviewed the Development Plan for conformance with Concept Plan comments of October 4, 2004 and recommends the Development Plan and Pattern Book be amended to adhere to the following comments:

1. Show elevations and details of the proposed rear decks, indicating materials and finishes.
2. Show elevations and details of proposed screening treatments of HVAC and metering systems.
3. Show elevations, details and locations of proposed mailboxes.
4. Clearly illustrate the location, height, and **building materials** of the wing walls on the plan.

In addition to the aforementioned this office defers to the Departments of Recreation and Parks, DEPRM, and the Office of Zoning Review for the requests that are under the purview of those respective agencies.

Prepared By: Curtis Murray

Division Chief: Lynn Lanham
CM:kma

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

State Highway Administration
Driven to Excel
Maryland Department of Transportation

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Date: 12.16.05

Ms. Kristen Matthews
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 300 RA

Dear. Ms. Matthews:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

L. G. Gredlein

Steven D. Foster, Chief
Engineering Access Permits Division

RE: PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
2001-2035 Lynch Road; S/S Lynch Road, 30' W c/line Marsdale Road	*	ZONING COMMISSIONER
12th Election & 7th Councilmanic Districts	*	FOR
Legal Owner(s): Hidden Cove Apartments, LLC by Steve Michael	*	BALTIMORE COUNTY
Contract Purchaser(s): P&S Homes, Inc by Thomas Scherr	*	06-300-SPHA
Petitioner(s)		

* * * * * * * * * * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of December, 2005, a copy of the foregoing Entry of Appearance was mailed Richard E. Matz, PE, Colbert Matz Rosenfelt, Inc, 2835 Smith Avenue, Suite G, Baltimore, MD 21209 and Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202, Attorney for Petitioner(s).

RECEIVED
DEC 20 2005
Per.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

GILDEA & SCHMIDT, LLC

DAVID K. GILDEA
DAVIDGILDEA@GILDEALLC.COM

LAWRENCE E. SCHMIDT
LSCHMIDT@GILDEALLC.COM

SEBASTIAN A. CROSS
SCROSS@GILDEALLC.COM

JOSEPH R. WOOLMAN, III
JWOOLMAN@GILDEALLC.COM

D DUSKY HOLMAN
DHOLMAN@GILDEALLC.COM

JASON T. VETTORI
JVETTORI@GILDEALLC.COM

300 EAST LOMBARD STREET
SUITE 1440
BALTIMORE, MARYLAND 21202
TELEPHONE 410-234-0070
FACSIMILE 410-234-0072
www.gildeallc.com

TOWSON, MD OFFICE
220 BOSLEY AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 410-337-7057

December 8, 2005

Mr. John Alexander
Department of Permits and Development Management
111 W. Chesapeake Ave.
Towson, MD 21204

Re: P&S Development/Bear Creek

Dear John:

Pursuant to my prior meeting with you, attached please find drop off Petitions for Special Hearing and Variance. This project has been scheduled for a Hearing Officer's Hearing on January 6, 2006 and I would ask that the hearing on the Petitions be consolidated for a single public hearing on that date.

Should you have any questions or comments, please contact me. With kind regards, I am

Very truly yours,

Lawrence E. Schmidt

LES: dls
Cc:

10/19/05

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
S side of Lynch Road, 60 ft. wide, w of c/l of Marsdale Rd., 60' wide	*	DEPUTY ZONING COMMISSIONER
12th Election District	*	FOR
7th Councilmanic District		
(2001-2035 Lynch Road)	*	BALTIMORE COUNTY
Hidden Cove Apartments, LLC	*	CASE NO. 06-107-SPHA
Petitioners		

* * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Variance filed by the legal owners of the subject property, Hidden Cove Apartments, LLC, Owners and P& S Homes, Inc., Contract Purchaser. The Petitioners are requesting Special Hearing and Variance relief for property owned at 2001-2035 Lynch Road in the Dundalk area of Baltimore County.

The Special Hearing request is filed pursuant to Sections 500.6 and 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.):

- To confirm that density (RA) for the subject as existed at the time of an approved preliminary plan remains and is applicable to the proposed development (See B.C.Z.R., 1963, Residential Apt, Section 217.7).
- To confirm the application of the DR 5.5 regulations as to use, bulk and area standards for the proposed development.
- Pursuant to above Sections and Section 32-4-107 (Baltimore County Code), to permit construction in a Tidal Flood Zone A.
- To amend an approved preliminary plan for "Bear Creek Towne".
- To confirm, pursuant to Section 409 of the B.C.Z.R., that no parking spaces are required for a proposed community pier.
- To confirm that the Residential Transition Area (RTA) standards are not applicable to the proposed addition.
- For such other and further Special Hearing relief as the Zoning Commissioner may require.

The Variance request is filed pursuant to Section 1A04.3.B.2.b of the B.C.Z.R.:

- To permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet, pursuant to Sections 102.2 and 1B01.2C.1 of the B.C.Z.R. for proposed dwelling on Lot 2.
- To permit as little as 0 sq. feet contiguous private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required by Section 504.2 B.C.Z.R., Page 27 (CMDP).
- To permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet, pursuant to Section 301 of the B.C.Z.R. for proposed dwellings on Lot 2.
- To permit a front setback of 13 feet in lieu of the required 25 feet pursuant to Section 1B01.2C.1 of the B.C.Z.R. for proposed unit #1 on Lot 2.
- To permit a side setback of 8 feet in lieu of the required 15 feet pursuant to Section 1B01.2C.1 of the B.C.Z.R. for proposed unit #5 of Lot 2.

The property was posted with Notice of Hearing on October 2, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on October 4, 2005, to notify any interested persons of the scheduled hearing date.

Amended Petition

Subsequent to the hearing in a letter dated November 18, 2005, the Petitioner withdrew its request for Variance without prejudice.

Applicable Law

Section 500.7 of the B.C.Z.R. *Special Hearings*

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Section 307 of the B.C.Z.R. – *Variances*.

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where

special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) Comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Office of Planning dated September 22, 2005, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the requested Special Hearing and Variance relief were Richard Matz, professional engineer, who prepared the site plan and Thomas Scherr, for the corporate Petitioner. Lawrence E. Schmidt, Esq. represented the Petitioners. There were no protestants or interested citizens in attendance at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Mr. Schmidt proffered that the entire tract contains 48 acres and is divided into two (2) sections which he designated using the existing tax map parcel numbers. Parcel 301 contains 30.7 acres and parcel 64 contains 17.48 acres. Eventually, the Petitioner proposes to resubdivide the property into two (2) lots of 35.7 acres, which will contain all the structures and a second lot with 10.23 acres containing the HOA area.

The overall tract is split-zoned DR 16 and DR 5.5 along the parcel 301 and parcel 64 boundary. Parcel 301 is zoned DR 16 with apartments known as the Hidden Cove Apartments. However, the Petitioner proposes to use a small portion of Parcel 301 for the road servicing the new development and part of seven (7) new condo units. Parcel 64 is zoned DR 5.5 and will contain the remaining condominium units. See Petitioner's Exhibit 6 for details of the new development and Exhibit 1 for the overall plan. Parcel 64 is essentially a peninsula jutting out into Bear Creek, a tributary of the Chesapeake Bay. The new development would be separated from Bear Creek by an extensive forest buffer area.

Mr. Schmidt presented Exhibit 2, the preliminary development plan known as Bear Creek Towne, which was approved by the County in 1966. It shows the Hidden Cove Apartments on parcel 301 were approved but the proposed development on parcel 64 "x" out and presumably not approved. The companion subdivision plat, Exhibit 3, was recorded in 1967 and reflects the County's decision not to approve the waterfront development on parcel 64 but to approve only the apartment complex on parcel 301.

The Special Hearing issues are as follows:

- To confirm that density (RA) for the subject as existed at the time of an approved preliminary plan remains and is applicable to the proposed development (See B.C.Z.R., 1963, Residential Apt, Section 217.7).

Mr. Schmidt indicated that the development plan and subdivision were approved under the RA, Residence, Apartment (1955 regulations), which allowed 18 apartments per acre net density. As such, 554 apartments would be allowed. The Hidden Cove Apartments has 504 apartments actually built leaving 50 apartments unused. The Petitioner would like to use seven (7) of the 50 left over apartments for this project.

In the alternative, the Petitioner argues that if one looks at the 30.7 acres of DR 16 having density of 16 units per acre, 492 density units would be allowed. 17.48 acres of DR 5.5 would allow 96 density units for a total of 588 units allowed. The existing apartment complex has 504 units and the Petitioner proposes 39 units for a total of 543 units proposed. Again, the overall density is not exceeded as there are 45 units remaining.

Finally, he argues that the bulk of the new condo units lie within the DR 5.5 zone. 39 new units are proposed. 96 units are allowed in the DR 5.5 zone. Consequently, the seven (7) condos, which are split by the zoning boundary line, should be attributed to the DR 5.5 zone even though parts of these units lie across the zone boundary.

- To confirm the application of the DR 5.5 regulations as to use, bulk and area standards for the proposed development.

Mr. Schmidt proffered that given the great bulk of the units are in the DR 5.5 zone, the DR 5.5 regulations are the applicable regulations for this new development.

- Pursuant to above Sections and Section 32-4-107 (Baltimore County Code), to permit construction in a Tidal Flood Zone A.

Mr. Schmidt proffered that units 1 through 11 are located in tidal flood zone A which require a waiver under Section 32-4-107 of the BCC. Mr. Matz drew the demarcation line between flood zone A and B on Petitioner's Exhibit 1 in pink highlighter. He noted that this was not a riverine flood area where new buildings are prohibited but rather a tidal flood area, which can be approved for new construction if the first floor of the residence is above the flood tide height, which he indicated in this case, is 11.4 feet. He presented Exhibit 4, the elevations for units 1 through 11, which shows only garages on the ground floor. Finally, Mr. Matz indicated that whatever fill is placed in the flood zone to build these units would not increase the flood levels as this fill is insignificant compared to the tidal flood area.

- To amend an approved preliminary plan for "Bear Creek Towne".

Mr. Schmidt indicated that the Zoning Office would like the preliminary plan for "Bear Creek Towne" to be amended to reflect the proposed development. Seven (7) condos and the service road would be added to the old plan.

- To confirm, pursuant to Section 409 of the B.C.Z.R., that no parking spaces are required for a proposed community pier.

Mr. Matz indicated that he asked the Department of Environmental Protection and Resource Management (DEPRM) in an initial submission to allow some parking near the proposed pier. However, because the pier would be used only by residents of the 39 units, and the parking lot would be located in the forest buffer area, DEPRM declined to allow that request. He pointed out however that the HOA could and likely would assign a few parking spaces as shown in orange highlighter on Exhibit 1 for residents who had heavy items to carry to their boats moored at the community pier. In any case, the pier would not be open to the public.

- To confirm that the Residential Transition Area (RTA) standards are not applicable to the proposed addition.

Mr. Matz points out that there are no single-family detached, semi detached or duplex dwellings within 150 feet of the proposed development. Nor is the undeveloped tract less than two (2) acres. Consequently, no RTA is generated.

Findings of Fact and Conclusions of Law

- To confirm that density (RA) for the subject as existed at the time of an approved preliminary plan remains and is applicable to the proposed development (See B.C.Z.R., 1963, Residential Apt, Section 217.7).

In regard to the issue to confirm that density (RA) for the subject as existed at the time of an approved preliminary plan remains and is applicable to the proposed development (See

B.C.Z.R., 1963, Residential Apt, Section 217.7), I find that the subdivision plat was approved in 1967 allowing 504 apartments. 504 are built. A question arose how the County allowed 504 units when the applicable density is DR 16, and area 30.807. This would result in 492 units. However, I believe from reviewing the 1955 regulations that the extra twelve units were granted by the bonus density given to apartments over three stories tall. The regulations give ½ a density unit per floor over three stories. I conclude that the development plan must have shown 24 floors over three (3) stories in the entire complex.

That said, I would attribute the seven (7) partial units in this subject plan to the DR 5.5 zone and grant the requested relief. The overall density of the DR 5.5 zone would allow 96 units whole the developer proposed 39 units. The great majority of the units are in the DR 5.5 zone. There is no density problem in this request. I understand that much of the DR 5.5 zoned area is required to be kept as forest buffer by the present regulations. No further development will occur once the 39 units are built.

- To confirm the application of the DR 5.5 regulations as to use, bulk and area standards for the proposed development.

I agree with Mr. Schmidt that no development was granted in 1967 on parcel 64 and that if this parcel is to be developed now, the DR 5.5 regulations apply. I realize again that seven (7) units are in the DR 16 zone but as I have attributed these seven (7) to the DR 5.5 zone, the use, bulk and area standards of the DR 5.5 zone apply.

- Pursuant to above Sections and Section 32-4-107 (Baltimore County Code), to permit construction in a Tidal Flood Zone A.

As Mr. Matz points out, the first floor of the new 11 units is above the tidal flood level being used for storage only. The living space will be above the flood level. I agree that this tiny amount of fill as compared to the tidal flood area will not increase flood levels. This is not

a riverine flood area where building in the flood zone can greatly increase the level. Said another way, these 11 units are not going to change the flood level of Chesapeake Bay.

I find that good cause has been shown, and that the Petitioner would suffer exceptional hardship if the waiver were not granted. For the reasons cited above, these 11 units would not increase flood heights, impact public safety, incur extraordinary public expense, create nuisances, cause fraud, or conflict with other laws. Consequently, I grant this request.

- To amend an approved preliminary plan for "Bear Creek Towne".

I agree with the Zoning Office the preliminary plan for "Bear Creek Towne" should be amended as a housekeeping item to reflect the seven (7) new condos and service road.

- To confirm, pursuant to Section 409 of the B.C.Z.R., that no parking spaces are required for a proposed community pier.

There is a very long distance between some condo units and the community pier. As mentioned at the hearing, the HOA will have their hands full trying to juggle demands for parking near the pier and homeowner's rightful parking for their condo. However, I note that overall 90 parking spaces are required for the condos and 98 are proposed. Hopefully, the HOA will be able to assign some of these eight (8) extra spaces to the pier. I will grant this request.

- To confirm that the Residential Transition Area (RTA) standards are not applicable to the proposed addition.

I agree that no RTA is generated. The purpose to the RTA legislation is assure similar housing types are built adjacent to one another or that screening be provided where the housing types are dissimilar. However, not all housing types are protected. As Mr. Matz points out, there are no housing types within 150 feet to trigger a RTA nor is the undeveloped parcel less than two (2) acres. Consequently, I find that a RTA is not applicable to this situation.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' Special Hearing request should be granted.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 28 day of November, 2005, that the Petitioners' request for Special Hearing relief filed pursuant to 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve:

1. That the density of units 5, 6, 17, 18, 29, 30, and 39 partially located on parcel 301 are to be attributed to parcel 64 and its DR 5.5 zoning; and
   - To confirm the application of the DR 5.5 regulations as to use, bulk and area standards for the proposed development.
   - Pursuant to above Sections and Section 32-4-107 (Baltimore County Code), to permit construction in a Tidal Flood Zone A.
   - To amend an approved preliminary plan for "Bear Creek Towne".
   - To confirm, pursuant to Section 409 B.C.Z.R., that no parking spaces are required for a proposed community pier.
2. To confirm that the Residential Transition Area (RTA) standards are not applicable to the proposed addition.

be and are hereby GRANTED subject to the following restrictions:

1. Compliance with the ZAC comments made by the Office of Planning, dated September 22, 2005, a copy of which is attached hereto and made a part hereof; and

IT IS FURTHER ORDERED that the Petitioner's request for variance having been withdrawn is dismissed without prejudice.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:dlw

RECEIVED

SEP 26 2005

ZONING COMMISSIONER

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: September 22, 2005

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: 2001-2035 Lynch Road (Bear Creek parcels 301 and 64)

INFORMATION:

Item Number: 6-107

Petitioner: Hidden Cove Apartments, LLC

Zoning: ~~DR 5.5 and DR 16~~

Requested Action: Special Hearing and Variance

The subject property has already been submitted to the county as a concept plan. The concept conference was held on 10/4/2004. To date, a development plan conference has not been scheduled. The comments and recommendations listed below echo some of the comments and recommendations of the concept plan conference, which should be reflected on the subsequent development plan.

In addition to the aforementioned the development plan must comply with the eight compatibility objectives listed under Section 32-4-402(d)(1-8). This development is subject to Section 260 of the Baltimore County Zoning Regulations. This section requires the Director of the Office of Planning to make a finding to the Hearing Officer for all residential development of four lots or more in Baltimore County that is located within the Urban/Rural Demarcation Line.

The Hearing Officer or the Director of Permits and Development Management, as applicable, shall consider the findings presented by the Director of the Office of Planning or the Director's designee before a development plan is approved.

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's request for special hearing and variances provided the following conditions are met prior to or at the time of the development plan submittal for the subject property:

1. Provide elevations (all sides) of the proposed townhouses to this department for review and approval in the form of a pattern book.
2. The sides of the units that face Case Road shall include double windows, doors, etc., and shall not be left as a blank wall. Place a note on the plan addressing this issue.
3. Show an enlarged detailed plan for the front courtyard areas to include pedestrian walkways, building entrances, special paving, landscaping, and lighting.
4. Connect both visitors parking areas with a 5-foot sidewalk. In addition, connect the proposed paved walkways between the units to this sidewalk.
5. Illustrate how the proposed units work through a grading plan showing any required steps and walls.
6. Provide information concerning material types and color with the building elevations.
7. Clearly illustrate the location, height, and building materials of the wing walls on the plan.

In addition to the aforementioned this office defers to the Departments of Recreation and Parks, DEPRM, and the Office of Zoning Review for the requests that are under the purview of those respective agencies.

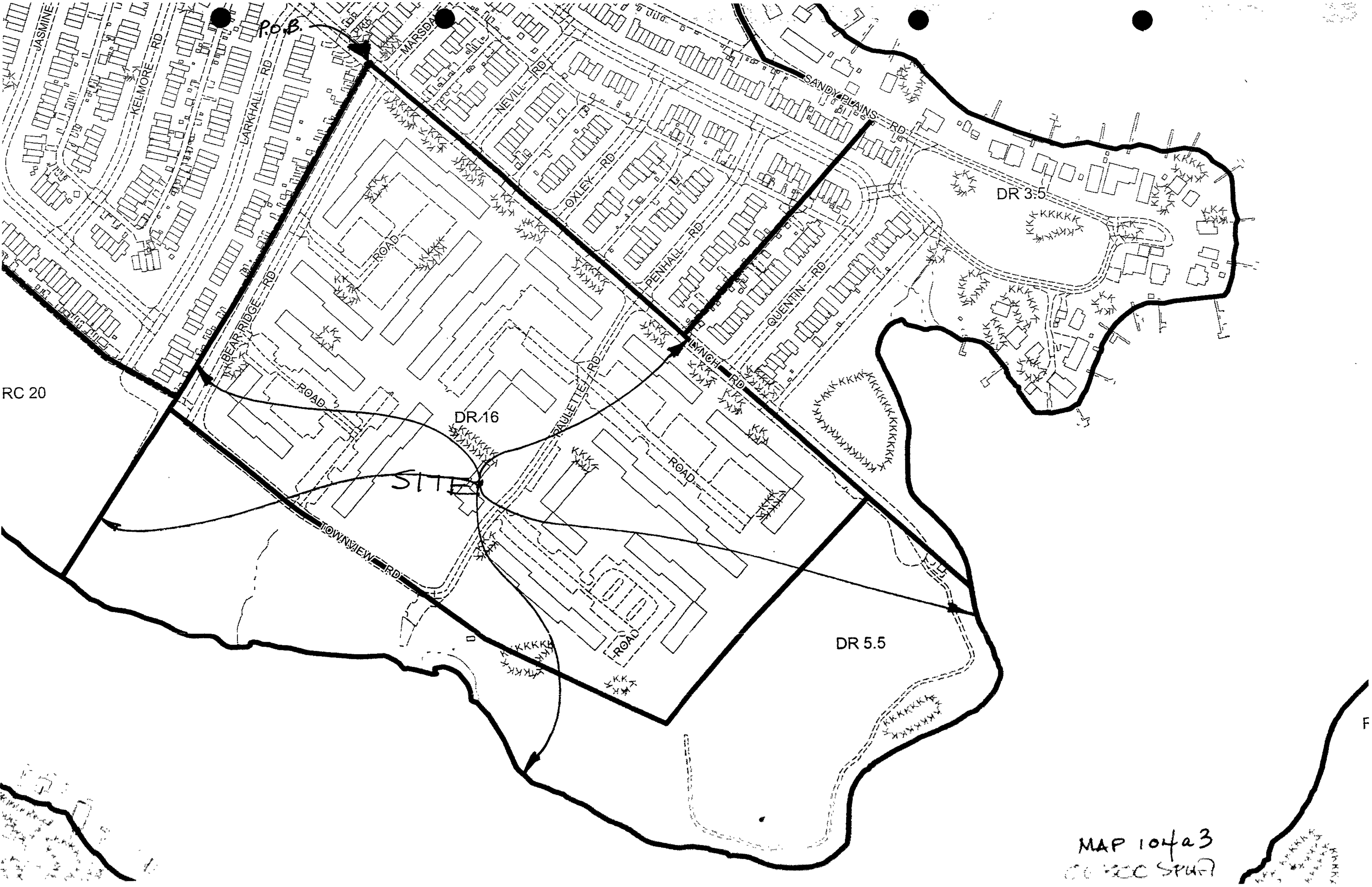
For further information concerning the matters stated here in, please contact Amy Mantay at 410-887-3480.

Prepared by: _____

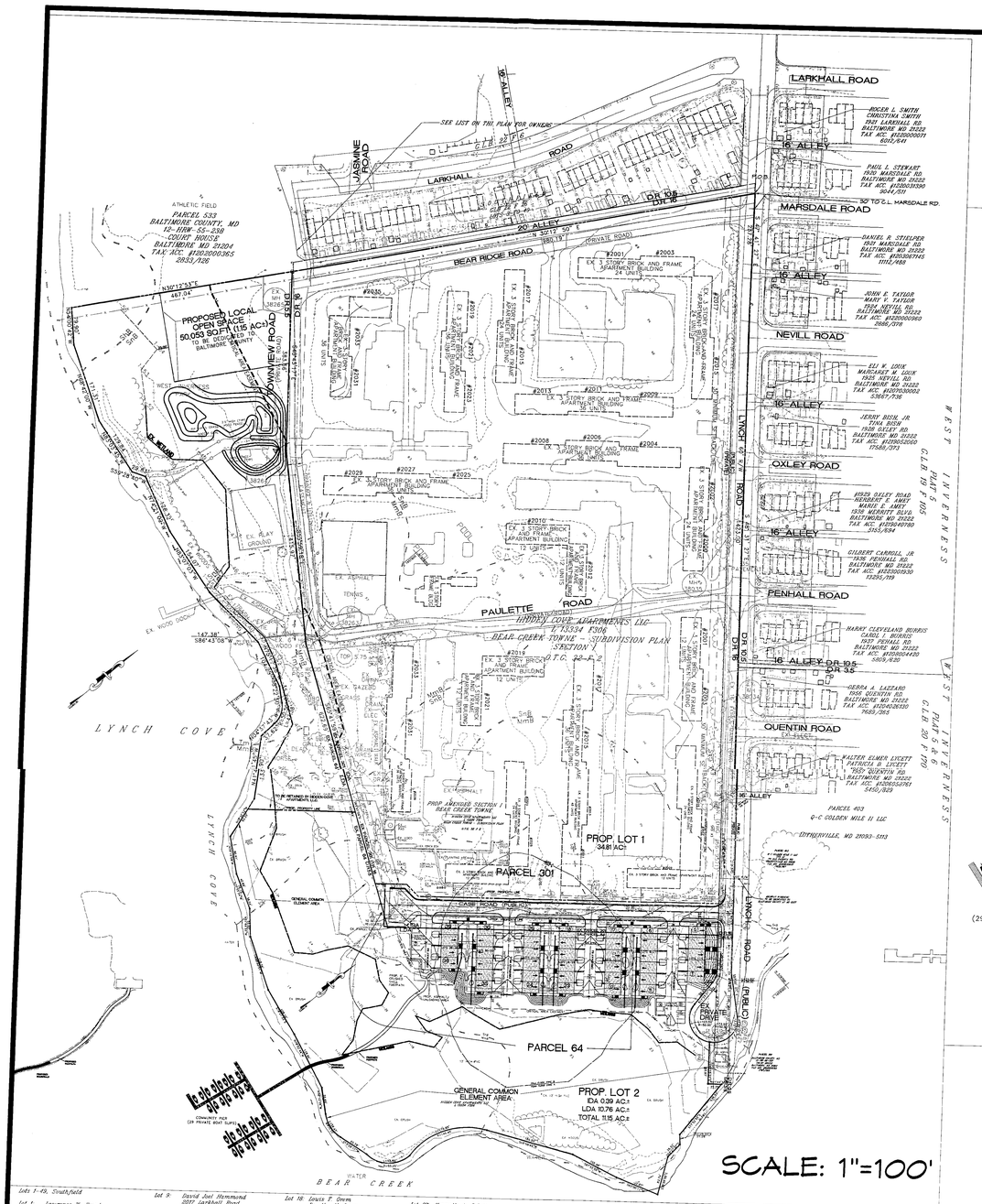
Division Chief: _____

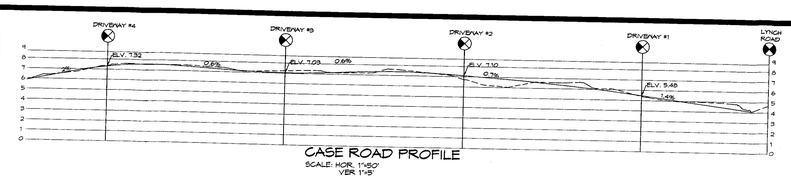
AFK/LL: CM

W:\DEVREV\ZAC\6-107.doc


P.O.B.
JASMINE
KELMORE RD
LARKHALL RD
MARSDA
NEVILL RD
SANDY PLAINS RD
OXLEY RD
PENHALL RD
QUENTIN RD
BEAR RIDGE RD
ROAD
ROAD
RAULETTE RD
LYNCH RD
ROAD
ROAD
TOWNVIEW RD
DR 16
SITE
DR 3.5
DR 5.5
RC 20
F

MAP 104a3





CASE ROAD PROFILE

SCALE: HOR. 1"=50' VER. 1"=5'

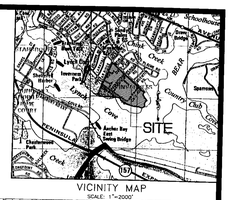
CHESAPEAKE BAY CRITICAL AREA (CBCA) EASEMENT:

STANDARD NON-DISTURBANCE NOTE:

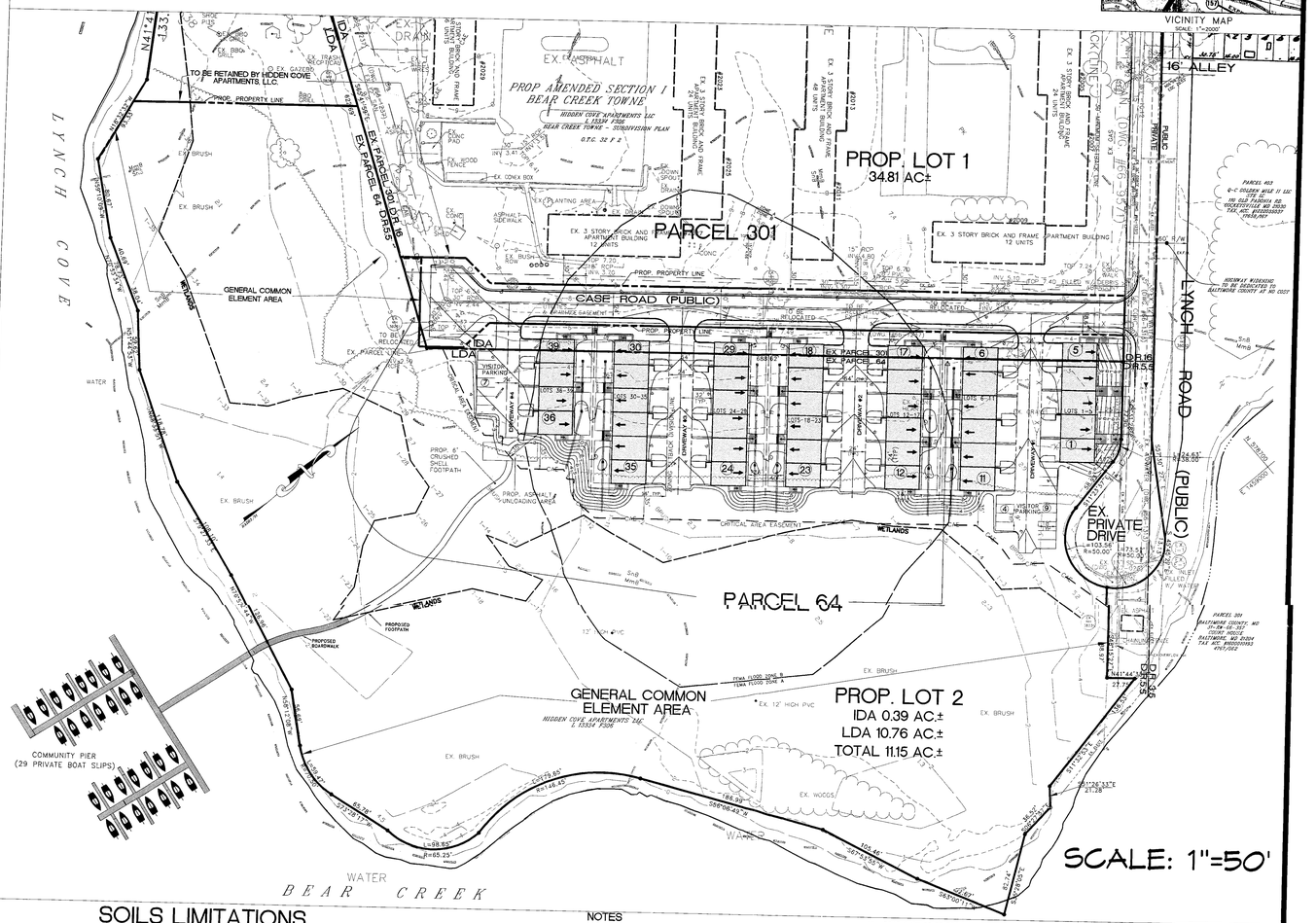
THERE SHALL BE CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE CRITICAL AREA EASEMENT EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.

PROTECTIVE COVENANTS NOTE:

ANY CRITICAL AREA EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.

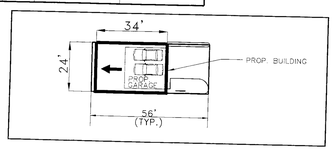


VICINITY MAP



SOILS LIMITATIONS

SYMBOL	TYPE	HSG	HOMESITES	
			W/BASEMENTS	W/O BASEMENTS
MmB	MATTAPEX SLIGHT	C	MODERATE: HIGH WATER TABLE	SLIGHT
SnB	SASSAFRAS SLIGHT	B	SLIGHT	SLIGHT
SnB	SASSAFRAS SLIGHT	B	SLIGHT	SLIGHT
Tm	TIDAL MARSH: SEVERE: HIGH WATER	D	SEVERE: HIGH WATER	SEVERE: HIGH WATER



DETAIL OF TYPICAL TOWNHOUSE

N.T.S.

IMPERVIOUS SURFACE LIMIT CHART

DWELLINGS	28,764 SQ.FT.	.66 AC.
WALKWAYS	6,889 SQ.FT.	.16 AC.
DRIVEWAYS	34,312 SQ.FT.	.79 AC.
TOTAL	76,819 SQ.FT.	1.61 AC.

ZONING ORDER CASE NO. 06-107-SPHA

WHEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 28th day of November, 2006, that the Petitioners' request for Special Hearing relief

filed pursuant to §500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve:

- That the density of units 5, 6, 17, 18, 29, 30, and 39 partially located on parcel 301 are to be attributed to parcel 64 and to DR 5.5 zoning; and
- To confirm the application of the DR 5.5 regulations as to use, bulk and area standards for the proposed development.

Pursuant to above Sections and Section 32-4-407, "Residential Cluster Styles", in rental communities in a Cluster Based Project:

- To amend an approved preliminary plan for "Bear Creek Towne";
- To confirm, pursuant to Section 32-4-416 B.C.R., that no zoning lots are required to be created or established;
- To confirm that the Residential Transition Area (RTA) standards are not applicable to the proposed subdivision.

IT IS FURTHER ORDERED that the Petitioner's request for variance having been withdrawn is deemed moot and dismissed;

Any appeal of this decision must be made within thirty (30) days of the date of this order.

JOHN E. BEVERUNGEN
ZONING COMMISSIONER
FOR BALTIMORE COUNTY

ATTACHMENT TO PETITION FOR VARIANCE

1. In the alternative to the Petition for Special Hearing filed concurrently with this Petition for Variance, to permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet, pursuant to Sections 102.2 and 1B01.2.C of the BCZR for proposed dwelling or lot 2.
2. If the alternative to the Petition for Special Hearing filed concurrently with this Petition for Variance prior to pattern has reclassified by the Zoning Commissioner, to permit as little as 0 sq. feet sqrt gulow private yard area per dwelling on proposed lots 2 - 10 in lieu of the 500 feet required by Section 504.2 (BCZR), Page 27 (Zoning).
3. To permit enclosed deck extensions of 10 feet in lieu of the maximum permitted 15 feet, pursuant to Section 301 of the BCZR for proposed dwellings on lots 2 - 10.
4. To permit a front setback of 13 feet in lieu of the required 25 feet pursuant to Section 1B01.2.C.1 of the BCZR for proposed unit 41 on lot 2.
5. To permit a side setback of 8 feet in lieu of the required 15 feet pursuant to Section 1B01.2.C.1 of the BCZR for proposed unit 49 of lot 2; and
6. For such other and further variance relief as the Zoning Commissioner may require.

ATTACHMENT TO PETITION FOR SPECIAL HEARING

1. In the alternative to the Petition for Variance filed concurrently with this Petition for Special Hearing and pursuant to Section 102.2 (BCZR) and Page 1-42.2 of the Zoning Commissioners Policy Manual, the Petitioner requests that the Zoning Commissioner determine that the use shown on the Plan to be deemed a permitted use in lieu of the use shown on the Plan to be approved, this Petition is appropriate.
2. Pursuant to Section 102.2 (BCZR) and Page 1-42.2 of the Zoning Commissioners Policy Manual, the Petitioner requests that the Zoning Commissioner determine that the distance between proposed dwellings on lots 2 as shown on the Plan to be approved, this Petition is appropriate and conformance with the BCZR.
3. In the alternative to the Petition for Variance filed concurrently with this Petition for Special Hearing and pursuant to Section 502.2 of the BCZR and Page 27 of the CMDM that the Zoning Commissioner determine that the proposed compliance plans for each lot as shown on the Plan to be approved, this Petition is appropriate and conformance with the BCZR.
4. For such other and further special hearing relief as the Zoning Commissioner may require.

NOTES

1. OWNER:
   HIDDEN COVE APARTMENTS, LLC
   1400 SOUTHERN MGMT CORP
   1400 OLD GALLOWS RD, 6TH FL.
   VIENNA, VA 22182-3933
   DEVELOPER:
   PULTE HOMES, INC
   701 FERN VALLEY CIRCLE
   BALTIMORE, MD 21228
   (410) 744-8589
2. SITE DATA:
   PARCEL 301
   TAX ACCT. NO. 1214090151
   DEED REF.:13334/306
   TAX MAP:104 GRID: 19
   ZONED D.R. 16 ZONING MAP 104a3
   PARCEL 64
   TAX ACCT. NO. 1214090150
   DEED REF.:13334/306
   TAX MAP:104 GRID: 19
   ZONED D.R. 5.5 ZONING MAP 104a3
   EX. USE: VACANT AND APARTMENTS
   PROP. USE: TOWNHOUSE AND APARTMENTS
   ALL PROPOSED UNITS ARE SINGLE FAMILY CONDOMINIUM TOWNHOUSE.
   SITE AREA:
   PARCEL 301
   (NET/GROSS)-1,337320 SQ.FT. OR 30.70 AC.±
   PARCEL 64
   (NET/GROSS)-761,608 SQ.FT. OR 17.48 AC.±
   TOTAL AREA: 2,098928 SQ.FT. OR 48.183 AC.±
   SITE AREA ZONED D.R. 16: 1,324502 SQ.FT. OR 30.41 AC.±
   SITE AREA ZONED D.R. 5.5: 767,8812 SQ.FT. OR 17.65 AC.±
   PROPOSED LOT 1: 1,516,399 SQ. FT. OR 34.81 AC.±
   PROPOSED LOT 2: 485,867 SQ. FT. OR 11.15 AC.±
   PROPOSED HIGHWAY WIDENING (CASE ROAD & LYNCH ROAD): 90841 SQ. FT. OR 2.09 AC.±
   TOTAL AREA: 2,093216 SQ. FT. OR 48.06 AC.±
3. DENSITY CALCULATION:
   (RA ZONE PER BEAR CREEK TOWNE DEVELOPMENT PLAN, APPROVED 5/27/66)

	NET AREA	UNDERLYING	UNITS PERMITTED	UNITS PROPOSED
PROP. LOT 1	34.81 ac.	557	504	39
PROP. LOT 2	11.15 ac.	178		

4. CENSUS TRACT: 4024.01
   INTERMEDIATE BALTIMORE HARBOR
   SUBWATERSHED: 42
   COUNCILMANIC DISTRICT: 12
   COMMUNITY COUNCIL DISTRICT: 7
   CONSTRUCTION SCHEDULE: START: TBD
   COMPLETION: TBD
   SEE ATTACHED PHASING PLANS
   ZONING: DR 16 & DR 5.5
   ZONING HISTORY: SPECIAL EXCEPTION 130
   ZONING VARIANCE: NONE
   SPECIAL HEARING: NONE
   EXISTING USE: VACANT
   PROPOSED USE: TOWNHOUSE
   TOTAL NUMBER OF UNITS: 543
   NUMBER OF BUILDINGS: 54
   NUMBER OF DWELLING UNITS: 543
   NUMBER OF STORIES: 3
   NUMBER OF BEDROOMS: 2 & 3
   NUMBER OF PARKING SPACES REQUIRED: 1,086
   NUMBER OF PARKING SPACES PROVIDED: 1,086
   EX. GARAGE SPACES: 543
   EX. DRIVEWAY SPACES: 543
   EX. STREET SPACES: 0
   PROP. GARAGE SPACES: 543
   PROP. DRIVEWAY SPACES: 543
   PROP. STREET SPACES: 0
   EX. HANDICAP SPACES: 2
   PROP. HANDICAP SPACES: 4
   TOTAL HANDICAP SPACES: 6
   EX. COMPACT SPACES: 0
   PROP. COMPACT SPACES: 0
   TOTAL COMPACT SPACES: 0
   EX. SURFACE SPACES: 0
   PROP. SURFACE SPACES: 0
   TOTAL SURFACE SPACES: 0
   EX. TOTAL SPACES: 1,086
   PROP. TOTAL SPACES: 1,086
   TOTAL PARKING SPACES: 2,172
   PARKING RATIO: 4 SPACES / UNIT
   EX. GARAGE SIZE: 10' X 20'
   PROP. GARAGE SIZE: 10' X 20'
   EX. DRIVEWAY SIZE: 10' X 40'
   PROP. DRIVEWAY SIZE: 10' X 40'
   EX. STREET SIZE: 0
   PROP. STREET SIZE: 0
   EX. HANDICAP SIZE: 8' X 18'
   PROP. HANDICAP SIZE: 8' X 18'
   EX. COMPACT SIZE: 0
   PROP. COMPACT SIZE: 0
   EX. SURFACE SIZE: 0
   PROP. SURFACE SIZE