M E M O R A N D U M

DATE: April 22, 2021

TO: Zoning Review Office

FROM: Office of Administrative Hearings

RE: Case No. 2020-0267-A – Appeal Period Expired

The appeal period for the above-referenced cases expired on April 7, 2021. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

/dlw

c: Case File
Office of Administrative Hearings

IN RE: **DEVELOPMENT PLAN HEARING & PETITION FOR VARIANCE**	*	BEFORE THE OFFICE OF
9th Election District	*	ADMINISTRATIVE HEARINGS
5th Council District		
(407 E. JOPPA ROAD)	*	FOR
RED MAPLE PLACE	*	BALTIMORE COUNTY
RED MAPLE PLACE LIMITED PARTNERSHIP	*	**CASE NOS. 09-0866 AND 2020-0267A**
Owner/Applicant		

* * * * * * *

ADMINISTRATIVE LAW JUDGE'S ("ALJ")
DEVELOPMENT PLAN OPINION & ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for a public hearing on a development proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code ("BCC"). Red Maple Place Limited Partnership, Owner/Applicant (herein known as "Developer") submitted for approval a 5-sheet redlined Development Plan (the "Redlined Development Plan") and a 5-sheet greenlined Development Plan (the "Greenlined Development Plan") prepared by DS Thaler & Assoc., LLC, known as "Red Maple Place". [1]

The Developer proposes to construct a four-story apartment building with parking on the lower level at 407 E. Joppa Rd., Towson (the "Property"). The building is to include 56 units: 22 one-bedroom, 17 two-bedroom, and 17 three-bedroom apartments. Details of the proposed development are more fully depicted on the Redlined Development Plan (Dev. Ex. 1A-1B) and the Greenlined Development Plan (Dev. Ex. 24A-E).

A Community Input Meeting ('CIM") was held on October 29, 2019. A list of participants is

[1] The Developer withdrew a Petition for Variance from § 307.1 of the Baltimore County Zoning Regulations ("BCZR") to allow a maximum building height of 45.5 feet (with a 10 foot extension for the stair tower for maintenance access to the roof) in lieu of the maximum height of 30 feet per the BCZR § 201.3A. Council Bill No. 107-20 which would have limited the height of the building was not passed by the County Council on November 16, 2020.

contained in the case file. A Development Plan Conference ("DPC") was held pursuant to BCC, §32-4-226(c) on August 7, 2020 and was attended via Webex by representatives of the County agencies listed herein.

The Property was posted with the Notice of Hearing Officer's Hearing ("HOH") and Zoning Notice, both on October 30, 2020, in compliance with the regulations. Due to the COVID-19 pandemic, a public virtual WebEx hearing in lieu of an in-person public hearing was conducted over five (5) days: November 19, 2020, November 20, 2020, December 16, 2020, January 13, 2021 and January 27, 2021. Dana Johnson, President and Chief Executive Officer of Homes for America attended the HOH in support of the project, along with Stacy McArthur, landscape architect with DS Thaler & Assoc., Inc. who prepared and sealed both the Redlined and Greenlined Development Plans. Christopher Mudd, Esquire, Adam Rosenblatt, Esquire and Venable, LLP represented the Developer. Michael McCann, Esquire represented the North East Towson Community Association, Michelle Yendall, Phillip Tyler and Nancy Goldring. There were many interested citizens in attendance at the HOH as enumerated herein.

AGENCY WITNESSES

Numerous representatives of the various Baltimore County agencies who reviewed the Redlined Development Plan also attended the HOH, including the following individuals from the Department of Permits, Approvals and Inspections ("PAI"): Jerry Chen, the Project Manager; Jim Hermann, landscape architect for Baltimore County who testified on behalf of Development Plans Review ("DPR") and Department of Recreation and Parks ("R&P"); LaChelle Imwiko from Real Estate Compliance ("REC"); Jose Venturina from DPR; and Rosalie Johnson, Office of Zoning Review ("OZR"). Also appearing on behalf of the County was Steve Ford from the Department of Environmental Protection and Sustainability ("DEPS"), and Marta Kulchytska from the Department of Planning ("DOP").

Each County agency representative indicated the Redlined Development Plan addressed all comments submitted by their agency, and they each recommended approval. (Dev. Ex. 1A-1B). The first County witness to testify was Jim Hermann who stated that a 2-sheet Schematic Landscape Plan was approved on November 16, 2020. (County Ex. 1). He added that a modification to the Landscape Manual Standards was requested via letter dated March 30, 2020 from the Developer which was approved by the Director of PAI on November 16, 2020 (the "Modification to Schematic Landscape Plan"). (County Ex. 2). The Modification to the Schematic Landscape Plan requests a modification from the required 5 ft. wide landscape strip at the base of a retaining wall which is less than 5 ft. in height, and from the required 10 ft. wide landscape strip at the base of a retaining wall which is 5 ft. in height or greater. As explained in the Modification to Schematic Landscape Plan, the retaining wall is proposed to range in height from 4.9 ft. to 20.8 in height. (County Ex. 2). The specific modification permits a 2.8 ft wide landscape strip at the base of the retaining wall consisting of native plants and vines.

On behalf of R&P, Mr. Hermann testified in regard to the Local Open Space ("LOS") requirement under BCC, §32-6-108(c) which demands 1,000 sf of open space per residential dwelling unit. For this apartment building, the LOS is 56,000 sf or 1.3 acres (56 units x 1,000 sf). (County Ex. 4). Mr. Hermann relayed that the Developer proposed to meet this LOS requirement by creating a walking trail system through the southern portion of the Property, provided that it was approved by DEPS. (*Id.*). In order to obtain DEPS' approval, Mr. Hermann explained that, the Developer submitted an Alternatives Analysis pursuant to BCC, §33-3-112 (aka the 'Forest Buffer Law'). If DEPS did not approve the trail system, the Developer would request an LOS Waiver. (Prot. Ex. 9).

After reviewing the Alternatives Analysis, DEPS concluded that impacts to the forest buffer had not been minimized and disapproved of the trail in the buffer. (County Ex. 3). However, DEPS

conditionally approved the Alternatives Analysis on the impacts to water quality associated with the sidewalk, stream culvert and improvements along East Pennsylvania Avenue, finding that those impacts were 'unavoidable.' On that issue, DEPS explained that, regardless of the proposed development, there was no sidewalk along East Pennsylvania Avenue, and the culvert was failing. In its May 7, 2020 letter, DEPS reiterated certain conditions for the Alternatives Analysis to be approved which conditions minimized impacts to water quality. (*Id.*).

Mr. Hermann explained that the Developer requested a variance from the Forest Buffer Law under BCC, §33-3-106. For that request, DEPS concluded that the variance would allow impact to 8,776 Forest Buffer Easement in order to construct a 4,490 sf parking lot, a 3,156 sf parking lot, and continued use of a 1,130 sf of picnic area for the Elks Lodge. (County. Ex. 4). DEPS emphasized that those two parking lots were in addition to an existing 2,647 sf gravel parking lot that was previously authorized to remain in the Forest Buffer Easement per the May 9, 2019 letter. (*Id.*). Consequently, DEPS denied the requested forest buffer variance finding neither practical difficulty nor unreasonable hardship and that impacts to water quality were not minimized. (*Id.*).

Mr. Hermann then explained that, because the DEPS denied the trail system in the buffer as the LOS, the Developer requested a Waiver of LOS. (Prot. Ex. 6, 9). He highlighted that, under the LOS Tier-5 Fee Schedule, the fee in lieu would be zero dollars due to the R.A.E zone and/or that the proposal is for affordable housing. (Prot. Ex. 7). Given that a fee-in-lieu of LOS would be zero dollars, and since DEPS denied the proposed on-site open space through the trail system, Mr. Hermann requested that the Developer provide the cost estimate of the on-site trail system, to provide recreational amenities at nearby off-site County-owned open space properties. The cost of the trail system was $33,000.00. (County Ex. 5). Mr. Hermann testified R&P found a need for improvements to the County-owned basketball courts at Carver Community Center located on Lennox Avenue and the Developer proposed

to allocate $33,000.00 toward that LOS. (County Exs. 6, 7; Prot. Ex. 10). The Developer's November 13, 2020 letter offered that in the event that the total $33,000.00 amount allocated to Carver Community Center is not used, any remaining funds should be allocated to other amenities at Carver Community Center and/or to The Adelaide Bentley Park. (County Ex. 6; Prot. Ex. 10).

Mr. Hermann agreed that under BCC, §32-6-108(e)(1) the applicant shall meet the open space requirement on-site or off-site, and that, under BCC, §32-6-108(f)(1), if the open space requirement can not be met on-site or off-site, the applicant shall pay a fee-in-lieu in accordance with the fees set forth in BCC, §32-6-108(i). Mr. Hermann agreed that a third option is to provide a fee for off-site amenities under an alternative agreement. For this option, the applicant is requested to provide the cost estimate for the amenity. (BCC, §32-6-108(e)(2)). This third option is supported by the Open Space Manual (p.7, (g) 'options for improvements/amenities'). BCC, §32-6-108(h). In this case, the definition of 'off-site' means property owned or controlled by Baltimore County. BCC, §32-6-108(a)(4)(i). Further, he noted the definition of 'open space' includes 'amenities.' BCC, §32-6-108(a)(5)(ii).

On cross examination, Mr. Hermann was asked about Bill 37-19 concerning the elimination of the provision that AOS can be deducted from the requirement of LOS under BCC, §32-6-108(c). Mr. Hermann did not agree that because LOS could not be provided on-site or off-site, that the Developer was prohibited from taking a credit for the AOS. He based his position on the definition of 'open space' which includes the term 'amenities.' Mr. Hermann explained that this project is grandfathered because the Concept Plan was filed prior to the September 16, 2019 effective date, and therefore, the AOS can still be deducted from the LOS requirement here. (County Ex. 8). In summary, Mr. Hermann testified that the $33,000.00 was proposed to be paid under the amenities provision and not under the waiver for a fee-in-lieu and that the Redlined Development Plan should be approved.

The second County witness was LaChelle Imwiko who testified on behalf of the REC. After reviewing the Redlined Development Plan in August of 2020, she had two (2) minor comments which were both addressed. As a result, REC had no outstanding comments and recommended approval. The third witness was Jose Venturina from DPR who reviewed the Redlined Development Plan and found that it met all of the County standards and regulations. On cross examination, Mr. Venturina confirmed that an analysis for the storm drain will be reviewed in Phase II.

On behalf of OZR, Rosalie Johnson testified that she reviewed the Redlined Development Plan and that all comments were addressed. The proposed development will lie within the RAE-2 zone of the Northern Parcel which measures approximately 1.10 acres. OZR did not recommend that any conditions be imposed. On cross examination, Ms. Johnson confirmed that she reviewed the Redlined Development Plan for compliance with the AOS regulations set forth in BCZR. She confirmed that the proposed AOS on the Redlined Development Plan included a generator, a drainage and utility easement, a transformer, storm water management facility and outfall, and the space between a retaining wall and the Property and she agreed that those areas are not 'usable' to the occupants of the apartment building or the public. (Dev. Ex. 1A-1B). However, she confirmed that there is no requirement that the AOS acreage be usable by activity. She testified that the AOS ratio calculation is 0.2 acres (11,916 sf) and that the Developer is providing .309 acres (18,427 sf). (*Id.*).

Testifying for DOP was Marta Kulchytska who submitted a Final HOH Report dated November 13, 2020 recommending approval of the Redlined Development Plan. (County Ex. 10). Ms. Kulchytska testified that because the proposal here is for residential development, it is subject to the Adequate Public Facilities Ordinance, School Impact Analysis under BCC, §32-6-105 ("SIA"). (County Ex. 9; Prot. Ex. 11). She reviewed the SIA which was filed on April 16, 2020 and explained that the SIA included pupil yields from approved development during the past 4 years. The schools designated for this development

are Hampton Elementary School, Dumbarton Middle School and Towson High School. The actual enrollment reflected as a percentage of Net State Rated Capacity ('SRC') was 86.42% for Hampton Elementary; 110.76% for Dumbarton Middle School, and 128.49% for Towson High School. Because Towson High School's projected pupils are over 115% of the Net SRC, there must be spare capacity for 175 students. The SIA confirmed that the adjacent Parkville High School has spare capacity of 268 seats and therefore could accommodate 175 students. (County Ex. 10).

Ms. Kulchytska also testified that the project is located within the East Towson Design Review Panel Area in accordance with Resolution No. 111-20 (adopted October 5, 2020) and therefore had to be reviewed by the Design Review Panel ('DRP'). (Dev. Ex. 21). On November 10, 2020, the Redlined Development Plan and the Pattern Book was reviewed by the DRP and was approved with conditions. (County Ex. 10). On November 13, 2020, the DOP and the DRP Chair reviewed the Redlined Development Plan and the Pattern Book and found that the latest revisions dated November, 2020 responded to the conditions imposed by the DRP. (Dev. Ex. 8A-8C).

On cross examination, Ms. Kulchytska's acknowledged her review of the Pattern Book including renderings of the proposed building from Joppa Rd. and East Pennsylvania Avenue. (Dev. Ex. 8A-8C). She testified that the data on the SIA forms are reviewed by Kui Zhao in the DOP. (County Ex. 11). In review of the SIA forms, the DOP does not make site visits to the schools.

The final County witness was Steve Ford from DEPS who testified on behalf of three (3) departments: Storm Water Management (SWM), Environmental Impact Review (EIR) and Groundwater Management (GWM). With regard to GWM, Mr. Ford relayed that there are no wells or septic systems onsite and the proposed development will utilize public water and sewer facilities. As a result, GWM had no additional comments and recommended approval. EIR (Glenn Shaeffer) reviewed the Redlined Development Plan noting that the proposed trail system and the proposed parking lots were removed

after the denial by DEPS of those features. Accordingly, EIR had no additional comments and recommended approval of the Redlined Development Plan. Mr. Ford also confirmed that on behalf of SWM, the Concept SWM Plan was approved by Andrew Fish, PE on November 18, 2020. (Dev. Ex. 22). Mr. Ford submitted the approved Concept SWM Plans. (County Ex. 12).

Developer's Case:

1. Stacy McArthur. The Developer's first witness was Stacey McArthur, P.E., the landscape architect who prepared and sealed both the Redlined and the Greenlined Development Plan. Ms. McArthur was accepted as an expert in land architecture, in the BCC in regard to development and in the BCZR. (Dev. Ex. 2). She also prepared the Pattern Book which provides details of the apartment building with architectural information and floor plans. (Dev. Ex. 8). A detailed rendering of the development provided useful information. (Dev. Ex. 7). She confirmed that only the Northern Parcel will be developed (the "Northern Parcel").

Ms. McArthur described the existing Southern Parcel as cluttered with trash and fallen trees and/or trees in poor condition, plus overgrown invasive plants (the "Southern Parcel"). Photographs of the existing site conditions are consistent with Ms. McArthur's description. (Dev. Ex. 8C, pp. 30-31). Four specimen trees on the Southern Parcel will remain as part of the Forest Buffer and Forest Conservation Easements. (Dev. Ex. 9). She reiterated that there are 2 specimen trees which are in poor condition and consequently, she filed a Special Variance Application pursuant to the Forest Conservation regulations for permission to remove those 2 trees. (Dev. Ex. 10, 11). On May 10, 2019, DEPS granted approval after finding that the Developer met the requirements of BCC, §33-6-116(d) and (e). (Dev. Ex. 12).

Ms. McArthur explained that the proposed apartment building will only be located on RAE-2 zoned, Northern Parcel. It will be 4-stories with an underground parking garage. The height of the

Developer sought and was granted approval on May 9, 2019 (on behalf of the Elks Lodge) to allow that club to continue to use that gravel driveway in the Forest Buffer area.

On behalf of Elks Lodge, the Developer also sought to add two (2) more parking lots on the Southern Parcel along E. Pennsylvania Avenue for Elks Lodge to use as event parking and to allow a picnic area on the western boundary. (Dev. Ex. 1). However, as indicated by Mr. Hermann who testified on behalf of R&P, DEPS denied those requests by letter dated May 7, 2020, because they would impose further impacts on the Forest Buffer. (County Ex. 4). Accordingly, Ms. McArthur testified that the additional proposed parking lots and picnic area were crossed out in red on the Redlined Development Plan. (Dev. Ex. 1). Mitigation planting is now indicated as required for those areas. (Id.). Ms. McArthur highlighted that additional plantings of major deciduous trees will be planted on the Southern Parcel along E. Pennsylvania Avenue. (Dev. Ex. 8, p. 5) as well as additional mitigation plantings throughout the Forest Buffer area. (Dev. Ex. 8, p.5).

On cross examination, Ms. McArthur did not agree that the 30 ft. building setback line was violated by the placement of the retaining wall within 11 ft. of the Northern Parcel property line with Harris Hills. Ms. McArthur acknowledged that while the eastern retaining wall is connected to the building, it is not considered to be part of the building from which the setback is measured. She explained that the building is an enclosed structure whereas the retaining wall retains the earth. Ms. McArthur testified that the proposed building is within 22 ft of the Northern Parcel eastern property line and within 66 ft. of the western Northern Parcel property line. Therefore, the bulk regulations have been met.

With regard to the height of the proposed building, Ms. McArthur opined that it is consistent with the height of the office building at 405 E. Joppa Rd. which is 3 stories above grade but has an outdoor parking lot in the rear of that building; the apartment building will sit at 4-stories over top of

the underground parking garage. Similarly, Harris Hills is a 3-story building and is 40 ft. tall as measured from the roof line. She added that the office buildings on the western side of Fairmount Avenue are taller than the proposed apartment building. (Dev. Ex. 17).

Ms. McArthur acknowledged that the Forest Buffer was generated as a result of the stream on the Southern Parcel which runs from the western side to the south. She clarified that a Forest Buffer variance from the 35 ft. Forest Buffer building setback line, as well as a reduction of the Forest Buffer area was granted by DEPS on May 9, 2019. (Dev. Ex. 1). As a result, the building is set back 28 ft. +/- from the edge of the Forest Buffer. That decision was not appealed.

Ms. McArthur did not agree on cross examination that the Special Variance for removal of 2 specimen trees were the result of the Developer's desire to place the building where the trees are located. (Dev. Ex, 11). One of those trees to be removed is located on the Southern Parcel, not in the developed area. When the initial Special Variance application was filed, the initial position of the building faced west and did not interfere with that tree. The reason for removal of the specimen tree was due to their poor condition. In this case, the Developer did not cut down trees and then ask for permission to remove them.

With regard to AOS, the required amount is 0.2 or 11, 916 sf/59,580 sf adjusted gross floor area. The project exceeds the required amount by providing 18, 247 sf. Additionally, the cost of the other amenities such as a trellis, benches, chairs, trash bins within the plaza area is $25,000.00. (Dev. Ex. 1, Note C). These amenities are provided in addition to the LOS fee-in-lieu of waiver of $33,000.00 to Carver Community Center for the basketball courts.

Ms. McArthur responded to cross examination questions that the proposed development took into consideration the East Towson neighborhood by: (1) providing a perpetual Forest Buffer and Forest Conservation Easement on the Southern Parcel; (2) adding a stream culvert and sidewalks along E.

Pennsylvania Avenue in accordance with the approved Alternatives Analysis dated May 7, 2020; (3) providing additional trees along the Southern Parcel boundary line with E. Pennsylvania Avenue; (4) obtaining, on behalf of The Elks Lodge, permission for that organization to continue to use the existing gravel driveway on the Southern Parcel; and (5) by filing on behalf of The Elks Lodge for additional parking lots along E. Pennsylvania Avenue and a picnic area adjacent to the Elk's parking lot (denied by DEPS).

On redirect, Ms. McArthur reiterated that the retaining wall is not part of the building foundation and therefore does not need to meet building setbacks. She opined that the Land Management Area in Master Plan 2020 marked the Northern Parcel as an "Urban Center" in purple is a clear demarcation line from the single-family homes along E. Pennsylvania Avenue. (Dev. Ex. 4). She testified that the Forest Buffer Variance approved on May 9, 2019 by DEPS for the Forest Buffer building setback and Forest Buffer reduction was not appealed. She added that, as it exists today, there are no perpetual easements protecting any of the Southern Parcel.

On re-cross, Ms. McArthur testified that there is no violation of the building setback from the western side of the Northern Parcel property line because the garage, although connected to the building is not part of the building. She stated that parking decks are not part of a building under BCZR, §201.3(e)(2); this parking garage is open air, not enclosed, and may be built up to a property line. After re-cross, Ms. McArthur then proceeded to answer questions from interested citizens in regard to the design of the parking garage and stormwater management facilities.

2. Dana Johnson. The second witness to testify for the Developer was Dana Johnson who is the President and CEO of Homes for America, 318 6th Street, Annapolis, MD. Ms. Johnson has been with Homes for America for 8 years, serving the last 3 years in her current position. Ms. Johnson explained that Homes of America is a non-profit corporation which develops affordable housing to enrich the lives

of residents. She offered that affordable housing limits the type of tenant by rent and income (typically earning 20,000.00-60,000.00 annually).

In early 2018, Ms. Johnson stated that she had nine (9) meetings with community leaders including Adelaide Bentley, Nancy Goldring, residents of Harris Hills including Michelle Yendall, and Green Towson Alliance. In response to the concerns of the community leaders, Ms. Johnson explained that concessions were made including, by way of example, an offer to provide a gate at McManus Way into Harris Hills to prevent traffic from driving through Harris Hills property, and flipping the building orientation from west to east so that residents of Harris Hills were not facing the back of the proposed building. Additionally, Ms. Johnson explained that the original color of the building was red brick. After objection, the color was changed to beige and grey colors. (Dev. Ex. 8A, pp. 6-9). Finally, an offer of $20,000.00 was made to East Towson Community for any improvement of their choice.

Ms. Johnson stated that, as time went on, it was clear that the East Towson community and Harris Hills would be opposed to the development. She testified that, in 2019, Harris Hills filed to downzone the Northern Parcel. The County Council voted to retain the RAE-2 zoning. [2] Ms. Johnson concluded that the proposed location will provide high quality affordable housing with access to schools and an employment center.

On cross examination, Ms. Johnson stated that of the 56 units proposed, 6 units will be market units and not part of affordable housing. She added that Harris Hills is an affordable housing development.

Protestants Case:

1. Michelle Yendall. Harris Hills, 521 McManus Way. Ms. Yendall has lived at Harris Hills

[2] Judicial notice is taken of Issue 5-004 from CZMP 2020 showing Harris Hills filed to rezone 0.5 acres of RAE-2 Northern Parcel to of OR2 and the remaining acreage of the Northern Parcel to DR 10.5 (with no change to DR, 10.5 Southern Parcel). The DOP, Planning Board and County Council voted to retain the RAE-2 zoning.

since it was built in 1994 and is a member of the Board of Directors. Harris Hills was developed as affordable housing. When purchasing her condo, the developer of Harris Hills (Struever Bros, Eccles & Rouse) told her that there was a floodplain on the Southern Parcel which prevented its development. Using the aerial photo, she testified that Harris Hills consists of 53 fully-occupied units (100-111 residents): 17 townhomes and 36 condominiums. She admitted that 12 of the 53 units are rental units; not owner-occupied. Her unit is on the ground level. Ms. Yendall testified that she is familiar with the development project and attended meetings with Homes for America and the County representatives.

Ms. Yendall is concerned with additional traffic generated by the apartment building and specifically vehicles using McManus Way to cut through to E. Pennsylvania Avenue. McManus Way is a narrow, private street which does not permit cars to be parked on either side. It is maintained by the Harris Hills residents. If a gate were erected as proposed by Ms. Johnson, it would prohibit the residents of East Pennsylvania Avenue from using the road. The County does not provide trash, snow removal or other services. She described the traffic on Fairmount Avenue and on E. Joppa Road as "never-ending."

She is also concerned about water runoff and soil erosion. Ms. Yendall testified that water runs from Harris Hills into the Southern Parcel wetlands area. Water problems have caused extensive repairs to a patio which sunk 2 inches below the concrete slab. She believes the proposed retaining wall will concentrate water flow through a narrow channel. She objects to the view that Harris Hills residents will have of the proposed apartment building; the 3rd floor of the townhouses will view the top of the proposed apartment building and the ground floor view will be of the retaining wall. She believes this view will negatively affect her property values.

2. Carol Allen. Carol Allen resides at 1969 Stoneleigh Rd. She is the Executive Director of Historic Towson, Inc. Between 2006-2018, she was on the Landmarks Preservation Commission and

served as its Chair. She provides walking tours of East Towson to educate the community about its history. During her appointment on the Landmarks Preservation Commission, she gained a lot of knowledge about the history of East Towson.

Ms. Allen noted that East Towson was formed from two (2) tracts of land from Lord Baltimore located south and east of the existing Towson roundabout. Hampton Plantation was owned by Charles Ridgely who owned 500 slaves. When Mr. Ridgely died, one of the slaves who was freed was Daniel Harris and he built his home on Hillen Rd. in East Towson. Between 1880-1913, East Towson was populated by freed slaves who built their own homes. It was a self-sustaining African American community. Ms. Allen explained that Harris Hills, named after Daniel Harris, was originally developed as affordable housing for the African Americans whose homes on west side of Railroad Avenue were demolished. (Prot. Ex. 16). The decedents of the freed slaves from Hampton Plantation have resided along E. Pennsylvania Avenue and the neighboring streets for generations.

Ms. Allen explained the importance of the Mt. Calvary AME Baptist Church on Eudowood Avenue and of St. James Church on Jefferson Avenue (Prot. Ex. 17-15). Additionally, Carver Community Center located on Lennox Avenue was originally the Carver School for African American children. (Prot. Ex. 17-14). The Elks Club has been the neighborhood social club for years. At least 2 of the homes built by the freed slaves were demolished to construct the Harris Hills access drive off E. Pennsylvania Avenue. (Prot. Ex. 16, 1929 Plat). One of the original Log Cabin homes dating to 1840s and known as 'The Jacobs House' which stood at 437 E. Pennsylvania Ave, was relocated to the grounds of the Carver Community Center. (Prot. Exs. 16,17). Another log cabin house known as the 'Parker House' was relocated to 410 Fairmount Avenue so that Towson Mews townhomes could be built. (Dev. Ex. 8C, p. 34).

Ms. Allen provided photographs of the homes in East Towson African American Survey District. (Prot. Ex. 17); (Dev. Ex. 6). These single-family and duplex homes are styled with gable roofs and front porches. (*Id.*). Ms. Allen then explained that a BGE Substation was built in the middle of these homes and destroyed the neighborhood. (Prot. Ex. 17-17). She testified that in the 1970s, the County would not agree to make the East Towson neighborhood a historic district.

On cross examination, Ms. Allen agreed that Joppa Road is not part of the East Towson neighborhood but she believes it impacts on East Towson. She also agreed that Carver Community Center is in the heart of East Towson. She repeated that homes along E. Pennsylvania Avenue were demolished to make way for Harris Hills.

3. David Riley. Mr. Riley lives at 7609 Knollwood Road, Towson which is ½ mile to south of the East Towson neighborhood. Mr. Riley is familiar with the project and attended the CIM. As a retired Diversity Director for the National Security Agency, it was his opinion that the size and scope of the project is inconsistent with the homes in the area. He felt that 56 units on 3 acres was too much density. Mr. Riley found that the proposed 4-story structure is out of proportion with other residential apartment buildings such as Rodgers Forge, Cedar Rd Apartments and Donnybrook Apartments. He did not believe the proposed building should be compared to the Hampton Plaza Apartments or to the commercial buildings on the western side of Fairmount Avenue. On cross examination, Mr. Riley acknowledged that Rodgers Forge is 3 miles from the Property and that while Tabco Towers apartment building is closer to the Property, it is not comparable because it is located in a commercial area. He agreed that Joppa Rd. is not part of East Towson Community.

4. Nancy Horst. Ms. Horst resides at 7819 Edenham Avenue, Towson. Her home is located in Ruxton which is 3.9 miles from the Property. Between 1998-2000, Ms. Horst previously worked on the top floor of the Carver Community Center. During that time, she became familiar with East Towson

and knew Adelaide Bentley. Ms. Horst described East Towson Community as close knit with friendly people. Ms. Horst testified that she is opposed to the size and scope of the proposed apartment building and feels the lighting will negatively impact the East Towson neighborhood.

5. Phillip Tyler. Mr. Tyler lives at 574 McManus Way in Harris Hills. He is the President of the Harris Hills Condominium Association which he confirmed is affordable housing. Like Ms. Yendall, Mr. Tyler has resided in this condo unit since it was built in 1994. He testified on his own behalf and on behalf of the residents of Harris Hills who are against the project. He also testified to the water damage which has caused erosion resulting in the repair of a porch, the repair of a patio which sunk, the installation of a French drain and the replacement of a pad for an air conditioning unit which eroded away.

Mr. Tyler explained that water runs down a gulley and into the wetlands on the Southern Parcel. Mr. Tyler is concerned that a retaining wall will create a narrow channel and will push water into that space. Harris Hills Association pays for all storm drains on McManus Way.

6. Barbara Hopkins. 7909 Tilmont Avenue, Parkville, MD 21234 is the Executive Director of Neighbor Space, a non-profit land trust formed in 2002, whose purpose is to protect the environment with parks, garden, trails and other natural areas. Her duties include management of land areas, oversight, strategic vision and fundraising. Ms. Hopkins was involved with Adelaide Bentley Park. Neighbor Space manages small parks with 20% of the funds collected from LOS fees as well as from private grants. The parks are protected by perpetual easements. Ms. Hopkins was accepted as an expert in LOS requirements in BCC, §32-6-108 and in the BCZR.

Ms. Hopkins reviewed the proposed LOS pursuant to BCC, §32-6-108. Subsection (c) requires that 1,000 sf of open space be provided per residential dwelling unit. Subsection (e) permits meeting the open space requirement on-site or off-site. If it is not feasible to provide the open space requirements

on-site or off-site, a fee in lieu will be paid to the County. (Subsections (f) and (i)). There is a fee schedule divided into Tiers that is prepared every two (2) years by the County Administrator Officer. (Subsection (i)).

Ms. Hopkins reviewed the Developer's request to pay a fee in lieu here because the proposed trail in the Forest Buffer which was to serve as on-site LOS was denied by DEPS. (Prot. 6). She also reviewed the Developer's request to spend the money that would have been used for the trail on off-site improvements at Carver Community Center basketball courts and fence. Ms. Hopkins opined that paying for off-site improvements does not meet the definition of open space under BCC, §32-6-108 (a)(5) because while LOS may contain amenities, amenities themselves cannot be LOS. It was her opinion that the Developer must prove that it is not feasible to provide on-site or off-site LOS before requesting to pay a fee in lieu. In review of the Developer's letters on LOS, there was no mention of feasibility. (County Ex. 6; Prot. Exs. 9, 10). In the Developer's request to pay a fee in lieu and supplemental request to donate to Carver Community Center, it did not address feasibility to provide open space on-site or off-site. (Prot. Ex. 6, 9, 10). Ms. Hopkins added that there is a deficit of LOS in the County. (Prot. Ex. 40).

On cross examination, Ms. Hopkins agreed that the Application for LOS does not require a statement of feasibility and that there is no definition of 'feasibility.' She agreed that the LOS approval process is through R&P, not through Neighbor Space. She also agreed that, in this case, it was not feasible to provide LOS on-site due to the denial by DEPS of the proposed trail and bridge through the Forest Buffer. Ms. Hopkins acknowledged that if there is no on-site or off-site available LOS, a waiver could be requested and fee-in-lieu of LOS could be paid which fee, in this case, is $0.00.

7. Beth Miller. 523 Murdock Rd., Baltimore, MD 21212. Ms. Miller is a registered architect, co-chair of Green Development Work Group, and a member of Green Towson Alliance ("GTA"). Ms.

Miller was accepted as an expert in architecture as well as in the BCC including the development review process, the development regulations and Forest Buffer and Forest Conservation regulations, and in the BCZR.

In review of the Redlined Development Plan, Ms. Miller measured the setback distances from both the eastern and western retaining walls, and from the parking garage on the western boundary to the respective Northern Parcel property lines. Having done so, she opined that the proposed minimum yard and building location requirements did not meet the required 20 ft. setback under BCZR, §201.3.C.3.a. She testified that the parking garage met the BCZR definition 'building' because it was: "....enclosed within exterior walls.....for the support or enclosure of .....persons.....or property of any kind." She also testified that the apartment building was 'very different' from Harris Hills condominiums. The Harris Hills buildings are 3-stories and appear as separate homes due to the gabled roofs and the variation of siding and color. In her view, the proposed apartment building appeared as 4-stories in the front and 7-stories in the rear.

Ms. Miller also testified that she attended the DRP meeting and stated that the Chairman of the DRP was incorrect that the apartment building was in a 'town center.' She clarified that neither the Downtown Towson (DT) District overlay ("DT") nor the Commercial, Town-Center Core ("CT") overlay has been applied to the RAE-2 zoning on the Northern Parcel. (Prot. Ex. 33). In Ms. Miller's opinion, the RAE-2 zoning on the Northern Parcel is not appropriate; RAE-2 zones should be applied to other areas in the County. It was her understanding, based on a conversation with DOP, that the DT was created in 2016 to supersede all previous districts and that, to be a 'town center,' a property must be located within a DT or CT.

Ms. Miller added that Resolution 111-20 included the Northern Parcel into the East Towson Design Review Panel Area (Prot. Ex. 47) which then made the Northern Parcel subject to the East

Towson Design Standards. (Prot. Ex. 48). Applying those Standards to the apartment building, she opined that it does not comply. She stated that those Standards have a limit for building length of 240 ft.; she measured the apartment building as 263 ft. To support her opinion, she created a photo key using the new Design Review Panel Area Map, with corresponding photos of the Harris Hills Condominium buildings, the homes and Elks Lodge on E. Pennsylvania, on Lennox Avenue and on Fairmount Avenue. (Prot. Exs. 23, 24). Ms. Miller explained that construction of Fairmount Avenue in the 1970s divided the historic neighborhood so that it is no longer a walkable community. Ms. Miller highlighted that traffic flows eastward from Towson Bypass, heads north on Fairmount Avenue and head east again on E. Joppa Rd. to access I-695. (Prot. Ex. 24).

Ms. Miller was also of the opinion that the Residential Standards contained in the Comprehensive Manual of Development Policies ("CMDP") have not been met. Specifically, the proposed apartment building is long than the maximum of 240 ft. and taller than the maximum building height of 50 ft. (Prot. Ex. 49, p. 32). While acknowledging that the building length and height for 'multi-family buildings' in the CMDP were limited to DR 5.5, DR 10.5, DR16 zones and PUDs (Prot. Ex. 49, p. 31), she stated on re-direct that RAE-2 zone was a 'residential zone' and therefore those policies should apply. She also pointed to a chart in the CMDP which lists the building height as 50 ft. (Prot. Ex. 49, p. 37).

In regard to AOS requirements, in her review of the Redlined Development Plan, 5,061 sf of the AOS provided is not usable, not visible and not accessible, therefore those areas should not count. Specifically, she testified that transformer and generator pads were located in the proposed AOS and these are not areas usable to the residents of the apartment building or to the public. Additionally, the Redlined Development Plan delineates the following as AOS which Ms. Miller felt are neither accessible nor visible or were below the required 10 ft. wide AOS: 3,025 sf below the retaining wall on the eastern

part of the Northern Parcel property line; 1,020 ft. on the western part between the retaining wall and the Northern Parcel property line; 420 sf on the eastern part between the retaining wall and the Northern Parcel property line; 396 sf delineated as 'shrubs' on the western the Northern Parcel property line; and a 900 sf area marked as mechanical and electrical equipment pads. (Dev. Ex. 1).

With regard to environmental variances requested by the Developer she summarized those as follows:

> 1) along E. Pennsylvania Avenue, the addition of a sidewalk and culvert where stream from Southern Parcel flows into the street (granted);
> 2) a pedestrian trail/path and additional parking lots and picnic area for Elks Lodge (denied);
> 3) removal of 2 specimen trees on the Northern Parcel (granted);
> 4) reduction of the Forest Buffer area (granted); and
> 5) reduction of the Forest Buffer setback for the apartment building (granted).

Ms. Miller acknowledged that the reduction of the Forest Buffer area and the reduction of the Forest Buffer setback for the apartment building were not appealed, and are therefore not reviewable here. However, Ms. Miller objected to the grant of the Forest Conservation variance for the removal of specimen trees as she believed their removal would impact water quality. Ms. Miller advocated that no unique circumstances existed here or there was no evidence that the land could not yield a reasonable return if the specimen trees remain. She felt the trees which were characterizes as in "poor condition" by DEPS could be restored to a healthy condition. Lastly, Ms. Miller showed videos of existing water drainage problems on surrounding properties. (Prot. Exs. 35-39).

8. Phoebe Evans-Letocha. 604 Stanley Rd., Baltimore, MD 21212 is the parent of a graduate of Towson High School and has an 11th grader who is still there. Ms. Evan-Letocha is an advocate who works with the County in regard to school overcrowding. She explained the Baltimore County Public Schools Student Count Report determines the enrollment numbers as of September 30th for each year.

(Prot. Ex. 12). The public school system is divided into planning areas. The enrollment numbers are listed for all elementary, middle and high schools in each planning area to determine how each school compares with the State Rated Capacity ("SRC"). (Prot. E. 32). Ms. Evans-Letocha provided the school profiles for Hampton Elementary and Towson High Schools. (Prot. Ex. 13, 14). Ms. Evans-Letocha also provided photographs of the trailers and crowded band room at Towson High School. (Prot. Ex. 15). She stated that there is a lack of space on the grounds for the trailers. Interestingly, despite this overcrowding, she made the decision to keep her children there and feels they received a good education. Ms. Evans-Letocha testified that she advocates for re-districting of Towson High School, even if it will cause taxes to increase.

9. Jane Huth. 6012 Lakehurst Drive, 21210, testified that her daughter graduated from Towson High School in 2017 and her son is a junior in a magnet program. Ms. Huth personally observed the hallways when classes were changing and 200-300 teenagers were packed in those areas. She remarked that it was not possible for students to use the bathroom. She described the trailers as musty and non-conducive to learning.

10. Daniel O'Leary. 4408 Roland Springs Drive, 21210. Mr. O'Leary was accepted as an expert engineer in water resources, in the State of Maryland and Baltimore County SWM regulations including the 2000 Maryland SWM Design Manual ("MD SWM Manual"). Mr. O'Leary reviewed the Concept SWM Plans (Prot. Ex. 44) and Computations for SWM Plan (Prot. Ex. 45). He opined that the MD SWM Manual was binding and required the SWM Concept Plan here to have certain Chapter 5 Environmental Site Design practices ("ESD"). (Prot. Ex. 46, 52). He added that Chapter 3 practices are the traditional Best Management Practices (BMPs) such as ponds and underground sand filters.

Mr. O'Leary testified that the SWM Concept Plan proposes two (2) structures: (1) a Filterra filter (Chapter 5 - ESD practice); and (2) an underground sand filter detention vault (Chap. 3 – traditional

BMP). The stormwater then flows into a triangular, stone outfall. Mr. O'Leary opined that because only Chapter 5 practices can be used under the MD SWM Manual, the Concept SWM Plan will require six (6) more Filterra filters or other Chapter 5 practices. Otherwise, Mr. O'Leary stated that the amount of impervious surface must be reduced.

On cross examination, Mr. O'Leary did not know that the County had approved the Concept SWM Plan. (County Ex. 12; Dev. Ex. 22). Mr. O'Leary acknowledged that there are no devices controlling the water quality or quantity. He agreed that the proposed Filterra filter located at E. Joppa Rd. will slow the flow of water into the storm drain. Likewise, he agreed that the underground sand vault filters out pollutants and slows the flow of water from runoff of paved surfaces. At the outfall, Mr. O'Leary agreed that the stone rip rap will prevent soil erosion.

11. Samuel Collins, 132 Green Bridge, Lutherville, MD is a professor of anthropology in the Department of Sociology at Towson University. As part of a project for the National Park Service, Mr. Collins was on a team which studied Hampton Plantation and the area connected to it. He and his team prepared a report of their research. (Prot. Ex. 50). Mr. Collins echoed the testimony of Carol Allen that East Towson was founded by the freed slaves of Hampton Plantation. One of those founders was Daniel Harris who built a home in East Towson and helped other freed slaves do the same. Mr. Collins' research revealed that East Towson in the 1920s was a self-sufficient community. Today, the neighborhood founded by Daniel Harris is one of the best preserved African American communities which includes both Mt. Calvary and St. James churches and the Carver Community Center (formerly Carver School).

Mr. Collins testified that the decision to build Towson Bypass during the Spiro Agnew and Dale Anderson administrations attempted to erase the East Towson neighborhood. He said the construction of Fairmount Avenue was a mini bypass for the surrounding offices. On the west side of this neighborhood was the construction of the Courthouse and many commercial buildings which now make

up the Towson business area. On the east side, the intrusion by Black and Decker and the installation of the BGE substation. The construction of Towson Muse townhomes on the western side caused the relocation of one of the original landmark homes. On cross examination, Mr. Collins agreed that Carver Community Center is a key to the East Towson neighborhood. He added that the County refused to develop low-income housing which caused many African Americans to leave East Towson.

12. Nancy Goldring. 436 E. Pennsylvania Avenue, 21286. Mr. Goldring is the granddaughter of Adelaide Bentley who lived at 409 E. Pennsylvania Avenue. Ms. Goldring is also the great, great granddaughter of a slave at Hampton Plantation. Her home is the last house on E. Pennsylvania Avenue next to the Black and Decker parking lot. Ms. Goldring testified that 300 African American families live within the boundary of East Towson. She emphasized that the lack of housing stock caused many African American families to leave the East Towson neighborhood. She stated that the BGE Substation and the Harris Hills condominiums demolished the original homes of the freed slaves.

Ms. Goldring explained that Harris Hills (named after freed slave Daniel Harris) was developed in 1993-1994 to provide housing for African Americans so that they could return to East Towson. It had a First Time Home Buyer Program and a Community Development program that was to provide subsidies to purchase the condo units; yet that never happened. Ms. Goldring emphasized that of the 58 applications for Harris Hills Condominiums, only 5 units were sold to African Americans. Ms. Goldring testified that Harris Hills development was "not a genuine effort" to assist African Americans who were displaced when their homes were destroyed. Currently, she stated that Harris Hills is not predominantly African American.

Ms. Goldring believes the proposed apartment building will look 'institutional' and will appear as 7 stories tall. She is not opposed to affordable housing as historic East Towson is affordable housing; she lives in affordable housing. She is worried that the East Towson neighborhood will disappear. She

would support the County turning both Parcels into a park like the Adelaide Bentley Park. Ms. Goldring mentioned that Hampton Plantation which was built by slaves, is being maintained with federal money where 2 miles away, the neighborhood of freed slaves has been disappearing because of the County's actions. Ms. Goldring would like to see a walking path between the now Hampton Mansion and her East Towson neighborhood.

On cross examination, Ms. Goldring stated that she supported downzoning the Northern and Southern Parcels. She also supported a Bill which would have limited the height of the proposed building which Bill failed before the County Council. Over objection from counsel for the Developer, Ms. Goldring admitted that she sat on the DRP as the citizen representative at the November 10, 2020 meeting on this project and she voted against the proposal here. Ms. Goldring confirmed that only 3-5 of the original residents of Harris Hills were African American from the East Towson neighborhood. It is Ms. Goldring's understanding that the Consent Decree between the County and the NAACP (Prot. Ex. 51), only requires that the apartment units be offered to African Americans for the first 15 years. She added that while there is a 40-year loan to build the project, there is no requirement in the Consent Decree that during the remaining 25 years that units will be rented to African Americans. She also acknowledged that the apartment building was flipped at the request of Harris Hills so that the entrance and amenities now face Harris Hills.

COMMUNITY WITNESSES

In addition to the Protestants who were represented by Michael McCann, Esquire, there were numerous interested citizens who testified as follows:

1. Hindley Williams, Image Center of Maryland, 300 E. Joppa Rd., Towson. Ms. Williams works with people with disabilities to help them to find affordable housing which housing stock is scarce in Baltimore County. Ms. Williams stated that she receives calls from people with disabilities who live

in nursing homes but could live independently if affordable housing existed. She also fields telephone calls from homeless people needing housing. As a result, she creates waiting lists. It was her opinion that there is an urgent need for housing and that Towson is an ideal location for disabled people because it is walkable and there are a lot of buses available for those who do not drive.

2. Patricia Lott. 320 E. Towsontown Blvd. owns Community Acupuncture of Towson. She is concerned that the proposed apartment building will increase traffic.

3. Suzanne Royer. 218 Margate Rd., Lutherville, MD 21092. Ms. Royer is a student in racial justice and has studied segregation in Baltimore County. She is opposed to the apartment building because it will take away green space and believes it will increase traffic.

4. Will Schwarz. 418 Terrace Way, Towson, MD 21204. Mr. Schwarz is the President of the Lynching Memorial which researches racial lynchings in Maryland. Mr. Schwarz relayed that in 1885 a gentleman named Howard Cooper was lynched and found in his Baltimore County cell. Mr. Schwarz believes that the County needs to reconcile the crimes against humanity and income disparities, bigotry and white supremacy which he stated is a "universal operating system to the disadvantaged." Mr. Schwarz stated that decisions in the County need to be made which will help communities affected by lynchings. He believes that the decision in this case should "right some wrongs."

5. Deborah Spice Kleinmann. 1208 Register Avenue, 21239. Ms. Spice Kleinmann, the Chair of the Greater Sierra Club, testified that she supports affordable housing and understands there is a shortage of affordable housing. Ms. Spice Kleinmann also supports the African American community of East Towson which has not been historically considered by the County. The Sierra Club is opposed to the apartment building because removing green space is detrimental to water quality.

6. Anthony Fugett. Past President of Towson NAACP, 300 Lennox Avenue, Towson testified on behalf of the Towson NAACP. He was the President of the Towson Branch of the NAACP during

which time the County entered into the Consent Agreement with the NAACP to provide 1,000 affordable housing units. (Prot. Ex. 51). Mr. Fugett testified that the NAACP is in favor of the proposed apartment building on the Northern Parcel. He explained that Baltimore County had an open policy of discrimination and was one of the most segregated Counties. Additionally, he said that there is no public housing in Baltimore County so there is a reliance on developers for projects such as this. The Consent Decree was entered into with the County to end decades of housing discrimination against African Americans and people with disabilities.

On behalf of NAACP, Mr. Fugett testified that while the past can not be changed, they can do better in the future. He stated that Towson has employment opportunities. The Towson NAACP branch moved from a previous location to the East Towson neighborhood on Lennox Avenue. The NAACP does not agree that the proposed apartment building will negatively impact the East Towson neighborhood. He stated that the proposed development is not tearing down any East Towson homes or buildings and is not intruding on the East Towson neighborhood. The NAACP sees the apartment building as a positive impact on East Towson neighborhood.

7. Kathleen Ramirez. 1702 Ridgely Garth, Lutherville, MD 21093. Ms. Ramirez advocates for affordable housing but not on the Northern Parcel. She is concerned that East Towson is one of the few historical neighborhoods left and is disappearing.

8. Marquise Adams. 437-A E. Pennsylvania Avenue. Mr. Adams testified that he grew up in Baltimore City where he lived near affordable housing. He now lives in the East Towson neighborhood and describes it as a close group of neighbors living on an old historic road. He added that the East Towson neighborhood became even more compact with the intrusion of Black and Decker. He finds the area is overpopulated which causes traffic and parking problems.

9. Martha Bedminster. 434 E. Pennsylvania Avenue. Ms. Bedminster moved to East Towson neighborhood in 1989. The Adelaide Bentley Park is behind her home. Since 1989, she has seen the development of large office buildings. Although she is not opposed to affordable housing, she is opposed to the apartment building at that location.

10. Jessica Mendoza. 621 Hastings Rd. Towson, 21286. Ms. Mendoza is a nurse and she is opposed to the apartment building.

11. Trevon Gross. 46 Bennetts Mills Rd., Jackson, NJ 08527. Mr. Gross is the great, great grandson of freed slave Nathan Harris. His family has lived in East Towson for 5 generations and many still live on Railroad Avenue. He testified on behalf of his family who is opposed to the development for the following reasons: 1) it will add traffic; 2) the height of the apartment building will cast a shadow over E. Pennsylvania Avenue and in particular the Elks Lodge; 3) water flow problems and the environmental design; and 4) the project is tone-deaf and cries out for racial justice. Mr. Gross added that East Towson is one of the earliest towns and one of its residents was the first to vote. While East Towson is historic, Mr. Gross noted that it still has not officially been made a historic district.

12. Barbara Samuels. 960 Fell Street, Unit 301, Baltimore, MD 21231. Ms. Samuels is an attorney and was the Fair Housing Director with ACLU for 28 years. Ms. Samuels was co-counsel in the lawsuit filed by NAACP against the County. She is in support of the apartment building and sees it as an asset to East Towson and to the County. She reiterated the testimony of the NAACP and others regarding the County's and Towson's history of segregation. Towson only has senior affordable housing but not general occupancy/family affordable housing. Ms. Samuels advocated that the apartment building here is not demolishing homes or converting homes to businesses and is not the same type of intrusion as Harris Hills or the BGE Substation or even the movie theater. Finally, she indicated that affordable housing produces less school aged children.

13. Michael Venturia. 306 E. Pennsylvania Avenue. While he has lived in East Towson, he has seen the African Americans lose their homes to development. He believes the proposed apartment building should be built in West Towson. He believes this apartment building will only add to the existing problems. Mr. Venturia has walked the Southern Parcel and is concerned about the environmental impact on the stream.

14. Paula Sauerborn. 300 E. Pennsylvania Avenue. Ms. Sauerborn believes that other buildings in Towson could be used for this development.

15. Joanne Williams. 333 Loreley Rd., White Marsh. Ms. Williams has been a member of St. James Church for 40 years. She is the former Director for the Department of Aging where she worked for 36 years. She was raised in East Towson but moved 10 years ago. She has seen the overgrowth of development.

16. Peta Richkus. 107 Versailles Circle, Apt. A, Towson. Ms. Richkus feels that every rule is being bent for this development. She mentioned that there were many intrusions and that the proposed development will harm the historic African American community and take away their green space.

17. Rovan Wernsdorfer. 6825 Campfield Rd., Apt. 9N, Gwynn Oak, MD. Ms. Wernsdorfer, a friend of Nancy Goldring, feels the development is tone deaf.

Rebuttal Case.

1. Dana Johnson. Testifying in rebuttal for the Developer was Dana Johnson for Homes for America who clarified that 6 of the 56 units proposed here are unrestricted. (Prot. Ex. 51).

2. John Motsco. John Motsco was admitted as an expert civil engineer with expertise in SWM issues, public works, zoning and development. (Pet. Ex. 14). Referring to Prot. Ex. 23, Mr. Motsco emphasized that there is no SWM on either Parcel so that there is currently no control of the water. He explained that the topography on E. Joppa Rd. is high and it drops down toward the Southern Parcel.

He stated that the proposed SWM Filterra filter device will capture a majority of the surface water runoff and pass it down stream. The SWM system is designed to reduce pollutants as well as detention and retention. On the east side next to Harris Hills, the water will drain down into the wetlands and stream system. Contrary to the concerns of Harris Hills, installing a retaining wall does not increase the water flow.

In fact, Harris Hills property is at a higher elevation so water would flow down to the underground vault which has a sand filter, will control the water flow, and will release the water at a lower rate. Accordingly, SWM devices will reduce the peak flow of water draining south. Mr. Motsco reiterated that the County approved the SWM Concept Plan. At the end of the Southern Parcel the rip rap pad also has a level spreader which will intercept the water flow. After that point the water enters the storm drain system at E. Pennsylvania Avenue. In short, Mr. Motsco opined that the SWM Concept Plan reduces the quantity of water and improves its quality and meets all of the County SWM regulations.

Mr. Motsco testified that the Maryland SWM Manual is only a guide per COMAR 26.17.02.01-1; it is not binding. BCC, §33-4-101(j) 'Design Manual' cites to that COMAR section. In other words, Mr. O'Leary's opinion that only Chapter 5 ESD practices may be used for SWM is not correct. In Baltimore County, Mr. Motsco testified that Chapter 3 BMPs are allowed where site conditions dictate. ESD to the MBE means using Chapter 5 ESDs to the extent practicable. In this case, some of the Chapter 5 devices (such as micro-bio retention devices, drywells and gravel wetlands) are not appropriate for the Southern Parcel; those devices are used on smaller and/or larger parcels.

The County requested that the Developer make improvements to the public storm drain system which includes installing a sidewalk along E. Pennsylvania on the Southern Parcel boundary. The photos submitted by Mr. Motsco show the County inlet is blocked and causes water to flow onto E.

Pennsylvania Avenue. (Dev. Ex. 23). The specific improvements will include installing a manhole over the existing pipe and installing a pipe extension underground. He opined that SWM and other improvements will benefit East Pennsylvania Avenue.

In regard to Ms. Miller's testimony regarding minimum yard requirements and building location in BCZR, §201.3.a, he testified that the Redlined Development Plan complies with the regulations and OZR approved it. Mr. Motsco also presented the Greenlined Development Plan which made the following changes to the Redlined Development Plan: (1) moved the retaining wall along the eastern side 1 ft. to the east; (2) reduced the width of the central driveway running along the eastern side of the proposed building from 22 ft. to 20 feet as permitted under BCZR, §409.4.A; (3) reduced a drive aisle within the garage from 22.6 ft. to 22 ft., as permitted by BCZR, §409.4.A; and (4) made one row of parking spaces within the garage small car spaces instead of full size spaces, as permitted by BCZR, §409.5. (Dev. Ex. 24A-24E). The Greenlined Development Plan increased the setback from the garage wall to the western Northern Parcel property line from 10 ft. to 15 ft. and removed certain AOS areas. The Greenlined Development Plan rebuts the Protestants' contention that the requirements of BCZR, §201.3.C.3.a. have not been met.

In regard to proposed AOS, Mr. Motsco explained that the Greenlined Development Plan removed the areas previously labeled as AOS and objected to by Protestants including a transformer and generator. Mr. Motsco opined that and even doing so, the amount of AOS still exceeds the required AOS. All of the AOS is not required to be 'useable'; AOS can be uncovered ground area and sidewalks. In his opinion, both the Redlined Development Plan and Greenlined Development Plan each comply with the regulations.

FACTUAL FINDINGS AND DECISION

The hearings in this case spanned five (5) days during which 38 witnesses testified: 6 County

witnesses; 3 on behalf of the Developer; 12 for the Protestants; and 17 interested citizens. There was a significant amount of testimony concerning political, cultural, historical and social issues. In order to reach a legal conclusion in this case, it is important to address the legal framework from which a development plan is reviewed by the OAH in Baltimore County.

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

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

The foregoing dictates that a Hearing Officer may not deny a development plan which meets all of the development rules, regulations and applicable policies.

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

The legal framework begins by analyzing the facts presented in evidence and then applying the County laws and regulations to that evidence. In this case, it is undisputed that there are 2 separate parcels of land, with 2 separate addresses, with 2 different legal owners, with 2 different zoning classifications, and 2 different access points on separate roadways leading into each Parcel. In

building is 44 ft. 8 inches above grade. There is a parapet on the southern end of the building for the garage elevator and for access to the roof which measures 9 ft. 11 inches. The length of the building is 260 ft. The elevation of the Northern Parcel drops 40 ft. from E. Joppa Rd. to E. Pennsylvania Avenue. There is a proposed retaining wall measuring 16-17 ft. in height between the Northern Parcel property line and Harris Hills condominiums ("Harris Hills").

Originally designed to face west, the building was flipped to face east after residents of Harris Hills objected to looking at the back of the building. (Dev. Ex. 9). Ms. McArthur testified that the Southern Parcel is zoned DR 10.5. As a condition of the approval by DEPS, the County is requiring that the Southern Parcel (1.4 +/- acres) be preserved in perpetual Forest Buffer and Forest Conservation Easements and recorded in the Land Records of Baltimore County. The rendering in the Pattern Book shows that these Easements extend the entire Southern parcel. To ensure compliance with these Easements, the County required notes on the Redlined Development Plan which would prevent the disturbance or removal of any vegetation in the Southern Parcel:

> There shall be no clearing, grading, construction or disturbance of vegetation in the Forest Conservation Easement and Forest Buffer and Forest Conservation Easement except as permitted by Baltimore County Department of Environmental Protection and Sustainability.
>
> Any Forest Conservation Easement and Forest Buffer and Forest Conservation 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.

(Dev. Ex. 1).

Ms. McArthur testified that the Elks Lodge at 411 E. Pennsylvania Avenue - the social club for the East Towson neighborhood - has been using a 2,647 sf gravel driveway on the Southern Parcel to access the Elks Lodge parking lot. A photograph of that gravel driveway is in the Pattern Book. (Dev. Ex. 8, p. 32). Given the Elks Lodge desire to continue to use this portion of the Southern Parcel, the

summary, the Northern Parcel addressed as 407 E. Joppa Rd., is 1.23 +/- gross acres (1.10 +/- net acres), and is zoned Residential-Apartment-Elevator (RAE-2) which permits high density apartment buildings *by right* (the "Northern Parcel"). It is owned by Cuba Land, LLC. The Northern Parcel is the only land to be developed. (Dev. Ex. 1; 24A-E). Conversely, the Southern Parcel addressed as 413 E. Pennsylvania Avenue, is owned by York Rd. Associates, is 1.75 +/- gross acres (1.66 +/- net acres), and is zoned DR 10.5 which permits 10.5 dwelling units per acre *by right* (the "Southern Parcel"). Most importantly, the Southern Parcel will not be developed.

1. The Northern Parcel.

The evidence is clear that the Northern Parcel is not part of the East Towson neighborhood of single-family homes which front on E. Pennsylvania Avenue. It is undisputed that the Northern Parcel fronts on E. Joppa Rd., which operates as its only entrance and exit. For last 47 years, the County Council has retained in place the RAE-2 zoning for the Northern Parcel. (Reclassification from DR-16 to RAE-2 on 6/20/1973). [3] (Dev. Ex. 1A; 24-A-E). Notably, the RAE-2 zone is the most intense of the Residential-Apartment-Elevator zones, permitting relatively high density (80 density units per acre) *constructed near commercial and business centers*. (BCZR, §100.1.A.2; §201.3.D). [4] The legislative policy for the RAE-2 zone encapsulates the pivotal role that elevator-apartment buildings play in and near those business centers:

> § 201.1. - General provisions.
>
> A. Statement of legislative policy. R.A.E.2 Zones provide for **development of elevator-apartment buildings at relatively high density, in residential settings close to the major commercial and cultural centers of the county**, where ample utilities and other public facilities are available.

[3] There were two (2) prior zoning reclassification cases in 1971 and 1973 for the Northern Parcel. In Case No.: 71-33-R, the Northern Parcel was reclassified from R-6 to RA (10/29/70), and in Case No.: 73-59-R, it was reclassified from DR-16 to the current RAE-2 (6/20/1973).

[4] By comparison, RAE-1 zone permits moderate density (40 density units per acre). (*Id.*; BCZR, §200.1).

(Emphasis Added). Moreover, RAE-2 zones are required, under BCZR, §201.1.B, to be located in a 'town center':

> § 201.1. - General provisions.
>
> B. Establishment of zones limited to town centers. Any **R.A.E.2 Zone must be located within a town center**, as defined in Section 101.

A 'town center' serves as the *primary center of commercial and high density residential* and is defined in BCZR, §101 as:

> TOWN CENTER — A locality designated and delimited as a town center by the Planning Board to serve **as the primary center of commercial (including supporting commercial) and higher-density residential development for an area having a population of approximately 100,000 or more persons**, and meeting criteria or guidelines adopted and published by the Planning Board. Industrial, lower-density residential, and institutional uses are not excluded from town centers (when allowed under the regulations for the zone in which they are located).

(Emphasis Added). In this case, the town center in which the Northern Parcel is located is "Towson Town Center." (Dev.18). As shown on the Towson Town Center map, the boundary line includes all the RAE-2 zoned properties as well as the commercial and business uses discussed more specifically herein. Excluded from the Towson Town Center map is the Southern Parcel and the East Towson neighborhood. This RAE-2 zoning category and Town Center designation differentiates the Northern Parcel from the E. Pennsylvania Avenue neighborhood.

Similarly, MP 2020 labels the Northern Parcel as an **'Urban Center.'** (Dev. Ex. 4). Consistent with the RAE-2 elevator-apartment zone, and the Towson Town Center designation, the description of

'**Urban Center**' in MP 2020 *emphasizes apartments and condominium projects* and states that those residential uses will help expand the market for businesses as follows:

> Towson is the urban center of Baltimore County. In addition to being the seat of county government, it is the site of a substantial business district, three large hospitals, the circuit court and district court, two universities, and the Towson Town Center – a regional mall. **The urban core of Towson is becoming a residential center as well, with several large apartment/condominium developments existing or proposed. These residential projects will help expand the market for businesses.**

(Dev. Ex. 4). (MP 2020, p. 80; Map 9, p. 40). (Emphasis Added). [5]

When viewed in the aerial photo submitted by Beth Miller, it is clear why the Northern Parcel has the abovementioned designations. There is an obvious line of demarcation between the Northern Parcel as it sits within a commercial setting, and the East Towson neighborhood. (Prot. Ex. 23, View 3). The Northern Parcel is bound on the north by E. Joppa Rd. - a 4-lane, busy thoroughfare, on the west by Fairmont Avenue – another 4-lane, busy thoroughfare, and to the east by a private road for use by Harris Hills residents (McManus Way). (Dev. Exs. 3, 8 - p.4). To the immediate west of the Northern Parcel is a 4-story commercial building at 405 E. Joppa Rd. which has its own surface parking lot in the rear. (Prot. Ex. 23, Views 2, 3, 11, 12; Dev. Ex. 8C, p. 33). On the western side of the Northern Parcel along Fairmount Avenue are the following: a business named 'Coyle Studios' at 516 Fairmount Avenue; The Law Offices of J. Carroll Holzer 508 Fairmount Avenue; single-family homes at 506 Fairmount Avenue and 502 Fairmont Avenue; and at 500 Fairmont Avenue a tax business. (Prot. Ex. 23, Views 2, 3, 13; Dev. Ex. 8, pp. 2-4).

On the eastern side of the Northern Parcel is Harris Hills, 10 buildings with 53 units. (Prot. Ex.

[5] The Towson Town Center map includes both the Northern Parcel (RAE-2 zoned portion), and the land to the east that is improved with the Harris Hills development.

23, View 2; Dev. Ex. 8C, pp. 40-41). Harris Hills has access into its development from both E. Joppa Rd. and from E. Pennsylvania Ave. (Prot. Ex. 23, View 3; Dev. Exs. 3, 17; 8C, pp. 40-41). To the east of Harris Hills on E. Joppa Rd. is Manor Care Health Services and its associated surface parking lot. (Prot. Ex. 23, View 2; Dev. Ex. 8C, p. 35). To the east of Manor Care Health are two (2) additional commercial office buildings with their own large surface parking lot in the rear. (Prot. Ex. 23, View 2; Dev. Ex. 3; 8C, pp. 3, 35).

Expanding outward from the immediate uses adjacent to the Northern Parcel at the intersection of E. Joppa Rd. and Fairmount Avenue are solely commercial uses. (Prot. Ex. 23, Views 1, 2 and 3; Dev. Ex. 8A, p. 3; 8C, p. 36). On the western side of Fairmount Avenue at its intersection with E. Joppa Rd. is the RCM&D building, 555 Fairmount Avenue, a privately held insurance advisory firm. (Dev. Ex. 8, pp.2-4). A group of high-rise office buildings which are zoned business-major, Downtown Towson District (BM-DT) sits in the block between E. Joppa Rd. to the north, Virginia Avenue to the west, E. Pennsylvania to the south and Fairmount Avenue to the east. (Dev. Ex. 3, 8C, p. 37). On the northside of the intersection of E. Joppa Rd. and Fairmount Avenue is a circular shaped, multi-story building which contains Hampton Plaza Apartments and Hampton Plaza Office Buildings (300 E. Joppa Rd.). (Prot. Ex. 23, View 3; Dev. Ex. 3; 8C, p. 36). On the north east side of that intersection is another business (400 E. Joppa Rd.). (Id.). On the northern side of E. Joppa Rd. opposite the Property are predominantly businesses occupying single-family homes. (Id.).

In addition to the inclusion of the Northern Parcel within a commercial setting, its topography also separates it from the East Towson neighborhood. The Northern Parcel sits on the E. Joppa Rd. ridge-line. (Dev. Ex. 1, 24 A-E). From that ridge-line, the topography drops down to the rear of the Northern Parcel. Conversely, E. Pennsylvania Avenue lies in a relatively flat area. (Prot. Ex. 17).

Moreover, the Northern Parcel is *excluded* from the boundary map for the East Towson Community Conservation Area as depicted on the Map 21 which is found in the Towson Community Plan on p. 74 ("Map 21") (the "Towson Community Plan"). The Towson Community Plan was adopted and incorporated into MP 2020 on February 2, 1992. (MP 2020, App. B) (Dev. Ex. 5). [6] Additionally, the Northern Parcel is also *not contained within the boundaries* of the East Towson African American Survey District (Dev. Ex. 6). When compared to Map 21, the East Towson African American Survey District is a smaller area contained within the boundaries of Map 21. The East Towson African American Survey District maps the African American single-family homes; the Elks Lodge; two (2) original churches in the neighborhood: the St. James A.U.M.P. Church at 413 Jefferson Avenue and the Mt. Calvary A.M.E. Church at 300 Eudowood Lane; as well as the Carver Community Center (aka Carver School) at 300 Lennox Avenue. (Towson Community Plan, p. 73).

Given that the Northern Parcel has been zoned for elevator-apartments for nearly 50 years, is within a commercial Town Center, is within an Urban Center, is not within the East Towson Community Conservation Area, is not within the East Towson African American Survey District, and is geographically separated by topography from E. Pennsylvania Avenue, the evidence is clear that it is not part of the East Towson neighborhood. As a result, it is not surprising that an apartment building would be proposed on the Northern Parcel on E. Joppa Rd. A detailed-rendering of the Northern Parcel shows the site-layout for one (1) apartment building, terrace area defined by a trellis, and drive aisle from E. Joppa Rd. (Dev. Ex.7). It shows proposed landscaping, seating area with table and benches with trash receptacles. (Dev. Ex. 8B, pp. 21, 29). As depicted in the Pattern Book, the exterior of the apartment

[6] The Developer's Exhibits include one (1) page of Towson Community Plan (Map 21, p. 74). However, OAH takes judicial notice of the Master Plan which includes, by adoption, the entire Towson Community Plan and the information contained therein in regard to the East Towson Community.

building will have staggered sections of white brick and cement with grey metal panels which break up the length of the building. (Dev. Ex. 8, pp. 6-15). While the apartment building is 4-stories, the architectural drawings show amenity space on the ground floor/main entrance level nearest to E. Joppa Rd. which gives pedestrians the perspective of a 3-story building. (Dev. Ex. 8A, p. 6-9).

2. Southern Parcel.

In direct contrast to the Northern Parcel, the Southern Parcel is not in the elevator-apartment zone, is not in a Town Center (Dev. Ex. 18), and is not in an Urban Center (Dev. Ex. 4). In fact, the Southern Parcel is within E. Pennsylvania neighborhood. The evidence demonstrated that the Southern Parcel, having an address of 413 E. Pennsylvania Avenue, is accessed only from E. Pennsylvania Avenue. It has a different owner than the Northern Parcel. It is zoned DR 10.5. Unlike the Northern Parcel, the Southern Parcel has environmental resources including a stream, wetlands, specimen trees, forest area, and other natural vegetation.

Distinguishing it further from the Northern Parcel, the Southern Parcel is also within the boundaries of the East Towson Community Conservation Area as depicted in Map 21. It is not within the boundaries of that African American Survey District. (Dev. Ex. 6.). The Towson Community Plan has a Section pertaining to the 'East Towson Community Conservation Area.' (Towson Community Plan, Section 8, p. 71). That Section describes the history of East Towson recognizing that the original property owners were freed slaves who, until 1830, had been kept at the Hampton Plantation. Importantly, it acknowledges that the East Towson community is the "only remaining portion of the larger African American community that from 1930 to 1960 extended as far as the York Road and Bosley Avenue area, in an area known as "Sandy Bottom," and in North Towson and West Towson." (Towson Community Plan, p. 71).

Adjacent to the Southern Parcel along E. Pennsylvania Avenue and within the boundary lines of Map 21 are three (3) single-family homes addressed as 405, 407 and 409 E. Pennsylvania Avenue. (Dev. Ex. 3; 8, pp. 38-39). To the east of those three single-family homes is the landmark, Towson Elks Lodge located at 411 E. Pennsylvania Avenue. The Towson Community Plan describes the Elks Lodge as "a fraternal organization that is an important social organization within the community." (Towson Community Plan, p. 73).

On the same side of the street as the Elks Lodge are two (2) more single-family homes (421 and 423 E. Pennsylvania Ave.) which are next to the access point for Harris Hills, followed by three (3) more single-family homes (435, 437 and 439 E. Pennsylvania Ave.). An aerial photo submitted by Beth Miller is again the best representation of how the Southern Parcel, with its trees and other vegetation, sits next to the Elks Lodge and the other E. Pennsylvania Avenue homes. (Prot. Ex. 23, View 1; Pet. Ex. 17). On the southern side of E. Pennsylvania are additional single-family homes. (Dev. Ex. 8C, p. 38; Prot. Ex. 17-17). The Adelaide Bentley Park is on the eastern end of that block and shares a boundary with the Black and Decker parking lot. (Dev. Ex. 3).

Given the current DR 10.5 zoning applicable to the Southern Parcel, it has always had the potential to be developed at a medium-high density of 10.5 dwelling units per acre (less the environmental constraints). Indeed, the prior zoning cases for the Southern Parcel are indicative of the type of development that could have occurred and would have eliminated the forest and green space. The zoning history of the Southern Parcel shows 2 prior zoning cases: The first case was in 1956 (Case No.: 3954) wherein variance relief was granted to develop the Southern Parcel into 2 – 10-unit apartment buildings of 2-stories each with drive aisles and driveways plus a parking lot for 20 cars along Pennsylvania Avenue. (Dev. Ex. 1; 24A-E). The second case occurred in 1960 (Case No: 4828XA) wherein a special exception was granted to construct a 2-story office building with a parking lot for 14

cars. (*Id.*). While the current environmental regulations would be more restrictive on development of the Southern Parcel, the E. Pennsylvania neighborhood has continuously faced potential development of the Southern Parcel. There is no doubt that development of the Southern Parcel would immediately impact the surrounding homes.

Notwithstanding the evidence presented and reiterated above, the Protestants and interested citizens expressed their grave concern that the proposed apartment building on the Northern Parcel will eliminate 'the only remaining piece of green space' in the East Towson neighborhood. Based the evidence presented, I find the opposite to be true. By approving the apartment building on the Northern Parcel, all development potential belonging to the Southern Parcel will be eliminated, and the 'green space' of the Southern Parcel will forever be preserved. Only the Elks Lodge will be permitted to continue to use the gravel driveway from E. Pennsylvania into their rear parking lot. (Dev. Ex. 3; Prot. Ex. 23, View 1). This 1.4 +/- acre Southern Parcel will be preserved under Forest Buffer and Forest Conservation Easements which will be recorded in the Land Records of Baltimore County. (Dev. 1; 24A-E). Permanent boundary markers for the Forest Buffer Easement may even be installed upon request by DEPS. (BCC, §33-3-114(b)(2). Because of this, the Southern Parcel becomes another step toward the preservation of this unique, historic neighborhood. The rendering of the Southern Parcel area reflects this end result. (Dev. Ex. 7).

Since there is no development of the Southern Parcel, the forest, the 4 specimen trees, the vegetation, the stream and the wetlands will be saved. The trash and fallen trees will be cleaned up. (Dev. Ex. 8C, pp. 30-31; Prot. Ex. 23, View 9, 14). As part of the development plan approval, the County has required that more trees be planted along the Southern Parcel boundary line with E. Pennsylvania Avenue and throughout the Southern Parcel. (County Ex. 1; Dev. Ex. 1, 24A-E). This mitigation planting of the Southern Parcel will serve as an additional buffer for the homes on E. Pennsylvania Avenue. The County,

through DEPS, recognized the impact of a parking lot and a picnic area to these environmental areas and denied the Developer's request for those items. (County Ex. 4).

Another concern of the Protestants was the view of the apartment building from E. Pennsylvania Avenue. Given that the size of the Forest Buffer and Forest Conservation Easement is 1.4 +/- acres, the distance between the homes on E. Pennsylvania Avenue and the proposed apartment building on the Northern Parcel is substantial. (Dev. Ex. 1; 24A-E). On this point, the Pattern Book provides a scale of the existing trees in the Forest Buffer and Forest Conservation Easement in relation to the height of the apartment building on the Northern Parcel. (Dev. Ex. 8B, p.24). The illustration informs that the existing trees are tall enough to provide a sufficient screen of the view of the building. (*Id.*). Additional plantings will only add to that buffer. (County Ex. 1).

While I find that the approval of the Redlined and Greenlined Development Plans will not adversely impact the East Towson neighborhood for all the reasons stated, the many concerns raised by the Protestants and interested citizens were palpable. I agree with the Protestants' characterizations in their Post Hearing Memorandum, of the *prior years of intrusions by the County and businesses into the Historic East Towson neighborhood.* As addressed by Carol Allen and Samuel Collins, the construction of Fairmount Avenue in the 1960s physically separated this neighborhood into 2 areas. Black and Decker was then permitted to build its complex at the end of E. Pennsylvania Avenue next to 436 E. Pennsylvania Avenue such that when Ms. Goldring opens her shades, she stares at that facility. (Dev. Ex. 8A, p.2; 8C, p. 39). If that were not enough, Black and Decker was even given road access to E. Pennsylvania Avenue from both its complex and parking lot. (*Id.*).

When comparing the plat dated June 1929 submitted by Carol Allen (Prot. Ex. 16), with the aerial photograph of this neighborhood (Dev. Ex. 3), it is clear that some of the original homes along E. Pennsylvania Avenue were removed to make way for Black and Decker's parking lot. Similarly, in

1994, when the Harris Hills condominium buildings were built along E. Pennsylvania Avenue more of the original homes of freed slaves were demolished. The older plats submitted by Carol Allen confirm that original homes (425-433 E. Pennsylvania Ave.) were located where the McManus access drive into Harris Hills is located.

Worst of all, however, in my view, is the BGE Substation which was built in 1952 in the center of single-family homes located along the southern side of E. Pennsylvania Avenue. (Dev. Ex. 3, 8C, p. 38). (Towson Community Plan, p. 75). Because of this intrusion, the original homes back up to the Substation. Using Carol Allen's maps, there is no doubt that the BGE Substation removed at least 8 of the original homes. While the Protestants politely describe the BGE Substation as 'obnoxious' in their Post Hearing Memorandum (p.3), I find that this BGE Substation in that location is an egregious intrusion and presents an actual danger to the residents there. If I had authority under the BCC to relocate this Substation, I would do so in this Order. But, I do not. The authority of a Hearing Officer in the review of a development plan is to determine whether it complies with the development regulations and applicable polices, rules and regulations. (BCC, §32-4-229(b)).

I also agree with the Protestants assertion that each of these intrusions has caused and/or contributed to attempts to 'erase' this neighborhood and to 'box-it-in'. (Prot. Memo., p.3). The photographs of the landmark homes provided by Carol Allen represent how charming this neighborhood is. (Prot. Ex. 17). Given these intrusions, the testimony of the residents there is understandable. It is clear that there is a history of freed slaves who built homes, raised families, and continued to thrive against all odds in this self-contained, neighborhood. And it is this self-contained enclave of landmarks homes within the designated East Towson Community Conservation Area Boundary (Map 21) (Dev. Ex. 5), and as further defined in the East Towson African American Survey District (Dev. Ex. 6), which separates it from the Northern Parcel. If an apartment building were proposed to be developed on the

Southern Parcel, with access to E. Pennsylvania, next to those homes, the result here might be entirely different. Accordingly, the evidence does not support the conclusion that an apartment building in the commercial corridor of E. Joppa Rd., on the Northern Parcel will negatively impact this unique neighborhood.

3. East Towson Design Review Panel Area v. East Towson Community Conservation Area.

Simply put, the East Towson Design Review Panel Area is not the same as the East Towson Community Conservation Area. The East Towson Community Conservation Area (Map 21) has design standards which apply to the properties within its boundaries. (Prot. Ex. 48). Separately, BCC, §32-4-204(a) provides that the Baltimore County Council may designate areas of the County in which development plans are subject to review by the Design Review Panel ("DRP"). The Design Review Areas are designated on maps which are adopted by the County Council as set forth in BCC, §32-4-204(b). The adopted maps are found in the Comprehensive Manual of Development Policies ("CMDP"), Division VI, Section C pursuant to BCC, §32-4-204(c)(d).

Under BCC, §32-4-203(d)(1), the DRP is comprised of a standing panel of nine members who by profession or experience are knowledgeable in matters of design, including architects, landscape architects, and other design professionals (the professional members), and a revolving panel of resident members (the resident members) who shall serve on specific review panels. Pursuant to BCC, §32-4-203(d)(2)(i), the County Executive appoints the nine professional members subject to County Council confirmation. Under BCC, §32-4-203(d)(2)(ii), the County Council appoints the resident members, each of whom shall be a resident of the Councilmanic District. The County Executive also designates one professional member to serve as Chairman of the Panel. (BCC, §32-4-203(d)(3).

In BCC, §32-4-203(b)(2), the purpose of the DRP is to act in a consulting and advisory capacity to the agencies involved in the interagency process for reviewing development plans under BCC, § 32-

4-226. (*Id.*). The DRP's primary goal is to "encourage design excellence." (*Id.*). BCC, §32-4-203(c)(1) directs the DRP to assess a proposed development for the following criteria:

> (i) Demonstrates a satisfactory spatial, visual, and functional relationship to the topographic characteristics, the natural features, and the built features of the site as well as the surrounding features of the site;
> (ii) Gives primary design consideration to the visual and functional integration of streetscapes, pedestrian pathways, playgrounds, recreational amenities, and parks;
> (iii) Demonstrates that streets and sidewalks are laid out as safe and convenient linkages and that parking becomes a positive design element that contributes to the overall image of the site;
> (iv) Demonstrates that buildings, parking garages, and other accessory structures are spatially and visually integrated and suitable to their surroundings in proportion, massing and type, materials and colors, signage, and other elements of urban design;
> (v) Demonstrates that plant materials are selected and sited to define the site, provide a theme or image appropriate to the development, frame views, enhance architecture and street characteristics, develop continuity of adjacent open spaces, improve the micro-climate, provide transition between dissimilar uses, screen the objectionable views and uses, reduce noise level and glare, and provide seasonal colors and other visual amenities.

CMDP, Division VI, Section C, repeats the requirements set forth in BCC, §32-4-203 and §32-4-204 and also provides the logistics for DRP meetings. The CMDP directs that for all development plans, the DRP applies the standards and guidelines of 'appropriate sections' of the CMDP and the MP 2020. [7]

As authorized by Bill 100-20 and as expressly stated in Resolution 111-20, the CMDP contains the East Towson Design Review Panel Area as a map on p. 204 which map was adopted on October 12, 2016 (the "2016 East Towson Design Review Panel Area Map"). (CMDP, p. 204). Prior to Resolution 111-20, the 2016 East Towson Design Review Panel Area Map did not include the Northern Parcel. (*Id.*). With the passage of Resolution 111-20, on October 5, 2020, the County Council enlarged the East

[7] Both BCC, §32-4-203(c)(2)(i) and the CMDP also directs the DRP apply standards in BCZR, § 260 Standards for residential projects. BCZR, §260.1.A does not apply here as it only applies to 'all residential development of four or more lots in Baltimore County that is located within the urban/rural demarcation line.'

Towson Design Review Panel Area thereby replacing the 2016 East Towson Design Review Panel Area Map from CMDP (p. 204) with an updated 2020 version (the "2020 East Towson Design Review Panel Area Map"). (Dev. Ex. 21; Prot. Ex. 53). In doing so, the 2020 East Towson Design Panel Area Map now includes not only the Northern Parcel but the entire block between Fairmount Avenue to the access drive for Black and Decker. (Dev. Ex. 21; Prot. Ex. 53).

With the passage of Resolution 111-20, this meant that the DRP had to review the proposed development project. The DRP meeting occurred on November 10, 2020 during which the DRP recommended approval with certain conditions. As set forth in the DOP HOH Report dated November 13, 2020 (County Ex.10), revised plans were submitted to the DOP for compliance with the DRP conditions. Ms. Nugent from DOP testified that the DRP conditions were satisfied and the Redlined Development Plan was recommended for approval. (*Id.*).

Protestants believe that Resolution 111-20 replaced a 2003 Map found on p. 3 of the East Towson Design Standards and that as such, the proposed apartment building is required to meet those standards (the "2003 Map p. 3"). (Prot. Ex. 48, p.3; Dev. Ex. 19). To be clear, the 2003 Map p. 3 is not the same map referred to in Resolution 111-20. The 2003 Map on p. 3 of the East Towson Design Standards is simply a reference diagram which overlays 3 different maps onto 1 map using 3 separate markings to show 3 different boundary areas:

(1) East Towson Design Standards Boundary marked with (——);
(2) Zoning Boundary and Designation marked with (.....); and
(3) Design Review Panel Boundary marked with (- - - - -).

(Id.). Two (2) of those maps - East Towson Design Standards Boundary (Map 21) and Zoning Boundary and Designation (Map 22) were taken directly from Section 8 of the Towson Community Plan as above. Resolution 111-20 expressly reads: the "previously adopted map dated October 12, 2016 and known as the "East Towson Design Review Panel Area" was being replaced by the updated map (i.e.,

the "2016 East Towson Design Review Panel Map") (Dev. Ex. 21; Prot. Ex. 53).

Said another way, if the 2003 Map on p. 3 referred to by the Protestants were updated for 2020, the "Design Review Panel Boundary" area would expand per Resolution 111-20, but the other 2 boundaries would remain the same. This analysis is further supported by Section 8 of the Towson Community Plan entitled 'East Towson Community Conservation Area" which is divided into 2 sections: I. *Action Plan* and II. *Design Plan.* (Towson Community Plan, p. 87). The 'Design Map' therein mirrors Map 21. (Towson Community Plan, p. 88). Thus, the 2003 East Towson Design Standards were the end product of the Design Plan for the 'East Towson Community Conservation Area' (Map 21) and the development potential for the Southern Parcel is addressed in the Design Plan section of the Towson Community Plan. (Towson Community Plan, p. 89). (Prot. Ex. 48). Because the 2003 East Towson Design Standards only apply to the Southern Parcel and do not apply to the Northern Parcel, the point moot.

Bulk Regulations in the RAE-2 Zone.

Protestants contend that the Developer failed to meet the Bulk regulations in the RAE-2 zone under BCZR, § 201.3. Specifically, Protestants argue that the retaining walls on western and eastern sides of the Northern Parcel, and the parking garage on the western side, are 'part of the building' from which the minimum yard and building location (building setbacks) are measured. The BCZR, Bulk Regulations in the RAE-2 zone for multi-family buildings read as follows:

> § 201.3. - Bulk regulations in R.A.E.2 Zones.
>
> * * * *
>
> C. Minimum yard requirements and building location requirements.
>
> * * * *
>
> 3. Notwithstanding any of the regulations of this subsection to the contrary, multifamily buildings that are located in the

R.A.E.2 Zone, are **within 500 feet of the Downtown Towson (D.T) District**, and are **within the boundaries of a town center** as approved by the Planning Board are subject to the following bulk regulations:

> a. No building shall be located less than 50 feet from the center line of any street, nor less than five feet from the street line thereof. ***No part of a building 40 feet or more in height above the average grade level at the building foundation line shall be located closer than 20 feet to any property line other than a street line; no part of a building less than such height shall be located closer than 15 feet to any property line other than a street line.***

* * * *

(Emphasis Added). The Parties disagree on the interpretation of Subsection 3.a. Developer's position is that for all property lines, any part of a building that sits at 40 feet or more above the average grade level must be setback 20 feet from such property line, and any part of a building below 40 feet in height must be set back 15 feet from such property line. (Dev. Post Hearing Memo., p.22). Said another way, Developer believes the height of the building (or the height of any part) determines the amount of the setback to the property line. The Protestants' position is that if the building is 40 feet or higher, then neither the building itself, nor any part of it, can be setback less than 20 ft. If the building is less than 40 feet, then neither the building itself, nor part of it, can be setback less than 15 feet. (Prot. Post Hearing Memo., p. 22). Because the locations of the western retaining wall and parking garage sit closer to the western property lines on the Northern Parcel, and because the eastern retaining wall sits close to the Northern Parcel eastern property line, Protestants calculate this as a setback violation.

The framework of Section 201 leads to the conclusion that the height of the building determines the setback because the RAE-2 zone regulates tall buildings – either apartment or office. First, as previously stated *supra*, a multi-family building in an RAE2 zone has the highest density at 80 dwelling units per acre. (BCZR, §100.1; §201.3.D). The statement of legislative policy for the RAE2 zone

provides for 'elevator-apartment buildings at relatively high density.' BCZR, §201.1.A. Suffice to say, in 1970, when the RAE2 zone was created by Bill 100-70, the language indicates that the County Council was anticipating tall buildings with elevators – large enough to accommodate 80 dwelling units per acre. As previously noted, the County Council directed that these elevator-apartment buildings were to be built in "major commercial and cultural centers of the county..." BCZR, §201.1.A.

Second, to regulate the height, the yard setbacks, and the building location of elevator-apartments in RAE-2 zone, Section 201.3 controls. Subsections A and B of 201.3 both regulate the height of the elevator-apartment buildings. In particular, Subsection B identifies a building of 'seven or more stories.' Subsection C is titled 'Minimum yard requirements and building location requirements.' Subsection C.3 refers to 'multifamily buildings that are located in the RAE-2 zone, are within 500 feet of the Downtown Towson (D.T.) District, and are within the boundaries of a town center as approved by the Planning Board are subject to the following bulk regulations' which is an area for tall buildings. The term 'multifamily building' is defined in BCZR, §101.1 as:

> MULTIFAMILY BUILDING — A structure containing three or more apartments. A multifamily building includes garden and other apartment buildings.

As applied here, the Northern Parcel is within 500 ft. of Downtown Towson (DT) District (located on the western side of Fairmount Avenue (BM-DT)). The Northern Parcel is within the boundaries of Towson Town Center. (Dev. Ex. 18). With regard to Subsection C.3.a., the definitions of 'building' and 'yard' as defined in BCZR, §101.1, are interconnected as follows:

> BUILDING — A structure enclosed within exterior walls or fire walls for the shelter, support or enclosure of persons, animals or property of any kind.
>
> YARD — Any open space located on the same lot with a building, unoccupied and unobstructed from the ground up, except for accessory buildings or such projections as are expressly permitted in these regulations. The minimum depth or width of a yard shall consist of the horizontal distance between the lot line and the nearest point of the foundation wall of the main

building.

Essentially, the point of disagreement leads back to whether a parking garage and/or a retaining wall is 'part of building' for the purpose of measuring the 'minimum yard requirements and building location' requirements under BCZR, §201.3.C.3.a. The definitions of 'building' and 'yard' make clear that the measurement of the setbacks from all property lines is measured from the nearest point of the foundation wall of the main building. I find that neither the parking garage nor the retaining wall constitute the foundation wall of the apartment building. Indeed, neither parking garage nor retaining walls are mentioned in the definition of 'building' or 'yard.' In their view, the Protestants suggest that a 'garage' could be substituted in place of the definition of 'building' in BCZR, §101.1. The evidence was clear that this parking garage is open to the air and not 'enclosed.' Similarly, I find that retaining walls are not 'exterior walls' within the definition of 'building' that 'enclose' a structure; retaining walls simply retain the earth.

As the Redlined Development Plan indicates, and as testified to by Ms. McArthur and Mr. Motsco, the distance from the Northern Parcel western property line to the apartment building is 22 ft; from the Northern Parcel eastern property line to the building as close as 66 ft. In rebuttal, Mr. Motsco presented the Greenlined Development Plan [8] which made the following changes to the Redlined Development Plan:

(1) moved the eastern retaining wall 1 ft. to the west;
(2) reduced the width of the central driveway running along the eastern side of the proposed building from 22 ft. to 20 ft.;
(3) reduced the drive aisle within the garage from 22.6 ft to 22 ft.;
(4) made 1 row of parking spaces within the garage small car spaces instead of full-size spaces.

[8] The Greenlined Development Plan rebutted the testimony of the Protestants' expert Beth Miller. As such, it was proper rebuttal evidence. Additionally, under BCC, §32-4-229(d)(2) permits an ALJ to impose conditions as part of the approval of a development plan and such conditions could have included the changes reflected on the Greenlined Development Plan. None of the changed affected the use, the number of units or the design of the building.

(Dev. Ex. 24-A-E). On the Greenlined Development Plan, the distance from the Northern Parcel western property line to the apartment building is 25.4 ft; from the Northern Parcel eastern property line to the building as close as 63 ft. Thus, under either Development Plan, I find that the 20 ft. setback has been met.

Additionally, I find that the provisions of the CMDP referred to by Ms. Miller which place additional limitations on the length and height of multi-family buildings, do not apply here. (Prot. Ex. 49, p.31). The CMDP makes clear that those multi-family limitations are only for DR 5.5, DR 10.5 and DR 16 zones as well as PUDs. (Dev. Ex. 20).

Stormwater Management.

The evidence is undisputed that there are no SWM facilities on either the Northern Parcel or the Southern Parcel. At present, uncontrolled water flows from the ridge on E. Joppa Rd. toward the wetlands and stream on the Southern Parcel. This is evident from the photographs and videos submitted by the Protestants through Ms. Miller and by the Developer. (Prot. Ex. 23, Views 9, 10, 14, 18, 19, 19 (detail), 35-7, 39; Dev. Ex. 23). In addition, both Michelle Yendall and Phillip Tyler testified that water from Harris Hills has been draining into the Southern Parcel since it was built in 1994. With the development of the Northern Parcel, the Developer will be installing SWM facilities as set forth in the SWM Concept Plan dated November 18, 2020. (County Ex. 12; Dev. Ex. 22). As explained by Mr. Motsco, the proposed SWM devices control not only the quantity of water but also improve the quality of water by capturing pollutants with use of a Filterra filter and sand filter underground vault, as well as with the use of a level spreader device and a pipe extension on E. Pennsylvania Avenue to gather the water from the Southern Parcel and direct it into the underground public storm drain. Of note, Mr. Motsco testified the storm drain grate on E. Pennsylvania Avenue is on backward and is impeding the

water flow, causing ponding. The SWM facilities will be an improvement to the uncontrolled water flow problem and will greatly benefit the surrounding properties, not adversely impact it.

At this stage in the review process, BCC, §32-4-224(a)(10) only requires a development plan to have the following information:

> * * * *
>
> (10) Stormwater management areas supported by preliminary hydrology computations, and proposed and existing storm drainage systems and verification of suitable outfall;

I find that each of the above documents was submitted by Developer for review by the departments within DEPS (namely SWM, GWM, and EIR) who reviewed and approved the Concept SWM Plan. (County Ex. 12; Dev. Ex. 22). I find Mr. Motsco's testimony in regard to the type of proposed SWM facilities to be consistent with BCC. BCC, §33-4-101(j) makes clear that the Maryland SWM Manual referenced by Mr. O'Leary is a *guide* under COMAR 26.17.02.01-1 and does not mandate that only Chapter 5 ESD practices be used. In this case, I find that the Environmental Site Design (ESD) (Filterra filter – Chapter 5) is being implemented to the Maximum Extent Practical (MEP). Additionally, due to the site conditions, a traditional underground sand filter vault (Chapter 3 - BMP) is being proposed because it is absolutely necessary. Accordingly, I find that the Redlined Development Plan and the Greenlined Development Plan meet BCC, §32-4-224(a)(10).

Schools.

The Adequate Public Facilities Ordinance found in BCC, §32-6-103(e)(1)(2) states that development approval may not be granted in existing overcrowded school districts (defined as a district where enrollment exceeds 115% of the state-rated capacity ("SRC"), or if the development plan is projected to generate additional school population that would result in the school district becoming an overcrowded school district. Under the exceptions provided for in Subsection (f), a development may

be approved in an overcrowded school district if a school in an adjacent district has sufficient capacity to render the overcrowded school less than 115% of SRC.

A School Impact Analysis ("SIA") was submitted by Developer and was reviewed and approved by DOP in accordance with BCC, §32-6-103(g). (County Ex. 9). The SIA demonstrated that the 56-unit apartment building here would generate 1.79 (rounded-up to 2) students at Hampton Elementary School, 0.896 at Dumbarton Middle School (rounded up to 1) and 1.40 at Towson High School (rounded up to 2). When added to the total pupils in those schools, the SRC would be 95.52% for Hampton Elementary, 113.29% for Dumbarton Middle School and 128.89% for Towson High School. Of those 3 schools, only Towson High School meets the definition of an overcrowded school. DOP recommended approval because the adjacent Parkville High School has a spare capacity of 268 seats at the time of the filing date (4/8/2020).

Phoebe Evans Letocha, a parent who has been actively involved in the Towson High School overcrowding issue, testified on behalf of the Protestants. She presented photographs of the trailers and crowded class rooms. (Prot. Ex. 15). Ms. Letocha was a knowledge and credible witness who testified that the best way to address overcrowding of Towson High School is through large-scale redistricting and/or by funding and building a larger school. I agree with Ms. Letocha's viewpoint that the solution to Towson High School's overcrowding issue requires a comprehensive County-wide plan.

As reiterated by OAH and by Board of Appeals in *In re: Development Plan Hearing (Enclave at Lyons Mill fka Homer E. Turner Property*, Case No.: 02-0288), the language in Subsection f (3) clearly provides the ALJ with discretion to analyze the overcrowding issue. Each case stands on its own merits. In the *Lyons Mill* case, there was an 'interrelated traffic problem" at Lyons Mills Elementary School which, when combined with the overcrowding there, was pivotal in denying that plan. (*Id.* at p.12). There was also persuasive testimony that the particular school was "already strained by the high

percentage of students receiving free and reduced lunch, because this population requires more 'wrap around' services, and providing those services impacts the staff's ability to provide quality education to the entire student body." (*Id.*). In this case, the SIA showed that 2 students are projected to go to Towson High School from the proposed apartment building. Given that fact, I find the adjacent Parkville High School has the spare, required capacity. Accordingly, I find that the Redlined Development Plan and the Greenlined Development Plan satisfies the requirements under the Adequate Public Facilities Ordinance and School Impact Analysis.

Local Open Space.

The requirement for a development to provide Local Open Space ("LOS") is found in BCC, §32-6-108(c) - a minimum of 1,000 sf of open space per residential dwelling unit. In this case, with 56 dwelling units proposed, 56,000 sf of LOS must be provided. The location of the required LOS can be on-site or off-site. (BCC, §32-6-108(e)). If it is not feasible to meet the LOS on-site or off-site, the applicant shall submit a fee-in-lieu request and pay a fee to the County. (BCC, §32-6-108(f)(1)).

To satisfy the on-site LOS here, the Developer proposed to install a walking trail and bridge over the wetlands and stream through the Forest Buffer area on the Southern Parcel. (Dev. Ex. 1; County Ex. 4). The trail would have connected to the new sidewalk that the County has required the Developer to build along E. Pennsylvania Avenue. The Developer submitted a Request for a Waiver of LOS dated March 29, 2020 along with a letter dated March 30, 2020 which explained the proposed trail and bridge, and requested that, if the same was denied by DEPS, to pay a fee in lieu of waiver. (Prot. Ex. 6). Under the Tier Fee Schedule contained in BCC, §32-6-108(a)(7)(iv), the fee in lieu was calculated as $0.00 because this apartment building has affordable housing units. On May 7, 2020, DEPS denied the request for the trail and bridge finding that it would negatively impact environmental resources on the Southern Parcel. (County Ex.4; Prot. Ex. 8). As a result, the Redlined Development Plan shows the on-site trail

and bridge crossed out. (Dev. Ex. 1).

On November 10, 2020, the Developer, through Counsel, submitted a supplement and revised Request for Waiver of LOS and fee in lieu in which the Developer requested to meet the off-site LOS requirement under BCC, §32-6-108(a)(4). (Prot. Ex. 9). Under that Subsection, 'off-site' is defined as land already owned or controlled by Baltimore County or Neighbor Space. BCC, §32-6-108(a)(4)(i). (*Id.*). The Developer emphasized that 'open space' is defined as "a parcel of land" with "a minimum width of 75 feet wide or has an average grade or no more than15 percent" and "contains one or more *amenities*." (BCC, §32-6-108(a)(5)(ii). An "amenity" is defined under (BCC, §32-6-108(a)(2) as "a feature, equipment, facility, installation, or structure that contributes to the enjoyment of area residents and visitors." The term "amenity" also includes other uses in the Baltimore County Local Open Space Manual (the "LOS Manual"). (*Id.*). The LOS Manual also permits R&P to make an 'alternative agreement' with a developer to provide amenities within existing open space.

R&P identified two (2) County-owned properties in the East Towson neighborhood which were being used for open space or for recreational purposes, and were in need of improvements namely: Carver Community Center, 300 Lennox Avenue; and Adelaide Bentley Park, 438 E. Pennsylvania Avenue. By letter dated November 13, 2020, the Developer supplemented a Revised Request for Waiver of Open Space explaining therein that Mr. Hermann, the County landscape architect, requested that the Developer submit a cost estimate for the trail system and additional detail on the proposal to provide improvements the basketball courts at Carver Community Center which is County-owned LOS. (County Ex. 6); (Prot. Ex. 10). Developer provided an aerial view of Carver Community Center basketball courts along with a detailed description and the cost of the trail as requested. (County Ex. 7); Prot. Ex. 10). The Developer also requested that, if the proposed off-site open space is denied, the County approve the fee in lieu in the amount of $0.00. (County Ex. 6, 7; Prot. Ex. 10). Mr. Hermann

testified that R&P approved the off-site open space as being satisfied under BCC, §32-6-108(a)(2) and (4), and by virtue of the LOS Manual alternative agreement, through the proposed improvements to Carver Community Center basketball courts.

Protestants agree that the denial by DEPS of the proposed on-site LOS satisfied BCC, §32-6-108. However, Protestants, through the testimony of Barbara Hopkins, argued that the Developer must provide new land as off-site LOS and that paying for improvements to existing open space areas owned by the County or by Neighbor Space does not satisfy BCC, §32-6-108. Additionally, Ms. Hopkins opined that the Developer was required to prove that it was not "feasible" to provide off-site open space before the Developer should be permitted to pay a fee in lieu.

Applying BCC, §32-6-108 to the facts here, I find, based on the evidence, that the Developer met the definitions for "off-site" open space in that the Carver Community Center is owned or controlled by Baltimore County/Neighbor Space, that it meets the definition of "open space," and that it contains an "amenity" such as "a feature, equipment, facility or structure that contributes to the enjoyment of area residents and visitors." (BCC, §32-6-108(a)(2)(4) and (5)). I take judicial notice of the approval by R&P of the off-site open space under the LOS Manual which permits R&P to make an alternative agreement. Here, R&P accepted the Developer's payment of $33,000.00 for improvements to County-owned open space at the Carver Community Center. Mr. Hermann testified that R&P has made these agreements for other projects.

By entering into an alternative agreement, the issue of feasibility has already been satisfied by the decision to accept the off-site improvements. I also note that in the event that R&P accepted the fee in lieu of waiver here, there is no dispute that the fee to be paid by the Developer for affordable housing units would have been $0.00. Because of this, Mr. Hermann reasoned that, rather than accepting zero dollars as the fee in lieu, it was better for the County-owned open space to receive $33,000.00 in

improvements at the Developer's cost. I find that the alternative agreement satisfies BCC, §32-6-108 and the LOS Manual.

Amenity Open Space.

The Redlined and Greenlined Development Plans are required to provide AOS under BCZR, 201.3.E. at a ratio of at least 0.2. The definition of AOS and AOS Ratio are found in BCZR, §101.1:

> AMENITY OPEN SPACE — The available open space on a lot minus the area used for vehicular traffic, maneuvering and parking. In addition to uncovered ground area, the term includes such usable uncovered open area of buildings suitably improved as open space and designated by the owner for the use of occupants or the public and, in enclosed malls in designated town centers, such usable covered open area of buildings, other than parking areas, suitably improved as open space and designated by the owner for the use of occupants or the public.
>
> Covered open space includes exterior space which is open on its sides to weather, but not open above, and which is not in excess of twice the total area of the clear, open and unobstructed portions of the open and partially open sides. The areas of roofed porches, covered exterior balconies and exterior spaces covered by portions of buildings supported on columns or cantilevers, such as porticoes, loggia, arcades, breezeways or galleries, may be considered as covered open space if meeting the above-stated limitations.
>
> Open ground area less than ten feet wide may not be designated amenity open space, except that a suitably planted area as little as seven feet wide may be so designated if that area is within a parking lot.
>
> AMENITY OPEN SPACE RATIO — The total amenity open space on a lot divided by the adjusted gross floor area of buildings on the lot.

On the Redlined Development Plan, the information provided was that the required amount of AOS at 0.2 was 11,916 sf and the AOS Ratio was 11,916 sf/59,580 sf adjusted gross floor area = 0.2. The proposed AOS on the Redlined Development Plan was calculated as 18,427 +/- sf, thus exceeding the required AOS. Protestants argued, through Ms. Miller's testimony, that the required AOS was not

provided because all of the AOS under the BCZR definition must be 'useable.' Protestants objected to including certain areas as AOS on the Redlined Development Plan such as transformers, generators and retaining walls which were either not usable or not visible, and therefore neither residents nor the public could use them.

Upon review of the Redlined Development Plan, the OZR through Rosalie Johnson, reviewed the AOS provided and approved its as satisfying the AOS requirements. It is Developer's position that the Redlined Development Plan exceeds the amount of required AOS. In rebuttal, Developer provided the Greenlined Development Plan which revised the AOS to remove the previously designated AOS areas which the Protestants claimed did not meet the definition. Under the Greenlined Development Plan, the AOS is measured at 14,158 sf/59,580 sf Adjusted Gross Floor Area = 0.2376, thus still exceeding the required AOS.

The express language in BCZR, §101.1 for AOS definition is "the available open space on a lot minus the area used for vehicular traffic, maneuvering and parking." Additionally, it is clear that the only restriction on AOS is that it cannot be an "open ground are less than ten feet wide." (*Id.*). The word 'usable' in that definition is specifically modifying the phrase 'uncovered open area of buildings suitably improved as open space…" in order to provide clarification that open areas of buildings and covered areas of building can both be included as AOS. Thus, I do not agree with Ms. Miller's interpretation of AOS as only areas designated as 'usable' can be AOS. I take judicial notice and accept the recommendation and interpretation of AOS by OZR who is charged with reviewing and determining the amount of AOS. Accordingly, I find that the Redlined Development Plan and Greenlined Development both provide AOS which meet the required AOS Ratio.

Forest Conservation Special Variances.

Developer filed a Special Variance request to remove one (1) specimen tree from the Northern

Parcel and one (1) specimen tree from the Southern Parcel under BCC, §33-6-116(d) and (e). (Dev. Ex. 11). BCC, §33-6-116(d) and (e) read as follows which require the Developer to meet 2 of the 3 factors under Subsection (d) and all 3 factors under Subsection (e):

> (d) Unwarranted hardship. For a finding of unwarranted hardship, the applicant must show:
>
> > (1) That the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the applicant of all beneficial use of the applicant's property;
> > (2) That the plight of the applicant is due to unique circumstances and not the general conditions in the neighborhood; **or**
> > (3) That the special variance requested will not alter the essential character of the neighborhood.
>
> (e) Additional findings required. In addition to a finding of unwarranted hardship, the Director must find:
>
> > (1) That granting the special variance will not adversely affect water quality;
> > (2) That the special variance request does not arise from a condition or circumstance which is the result of actions taken by the applicant; **and**
> > (3) That the special variance, as granted, would be consistent with the spirit and intent of this title.

(Emphasis Added).

In this case, DEPS reviewed the Application for Special Variance pursuant to BCC, §33-6-116(b)(5) and forwarded its decision to PAI for inclusion in the HOH file. (BCC, §33-6-116(f)). Pursuant to BCC, 33-6-116(g), the DEPS decision becomes a recommendation in this case. Applying Subsection (d)(1) to the facts here, I find that the applicant will not be deprived of all beneficial use of the Northern Parcel because the proposed construction could be designed around the (T5) Black Locust specimen tree. On the Southern Parcel, I find that the existence of the (T6) Red Maple specimen tree would not deprive the applicant of all beneficial use of that Parcel given that it will remain undeveloped.

Therefore, I find the Developer has not met Subsection (d)(1).

Under Subsection (d)(2), I find that the plight of the applicant is due to unique circumstances including the environmental resources on the Southern Parcel, as well as the irregular, elongated shape of each Parcel, and not the general conditions in the neighborhood. Under Subsection (d)(3), I find the special variance will not alter the essential character of the neighborhood which is predominantly commercial and completed built-out. The fact that the two specimen trees were in poor condition was unrefuted. Additionally, the Southern Parcel will remain preserved in perpetuity.

In regard to Subsection (e)(1), I find the granting of the special variance will not adversely affect water quality because there is no direct impact to either the wetlands or stream. Moreover, 4 specimen trees will remain in the Southern Parcel, 1.4 acres of forest will be protected in a Forest Buffer and Forest Conservation Easement and SWM facilities will be installed where none exist, all of which will improve water quality. Under Subsection (e)(2), I find that the request does not result from a condition or circumstance which is the result of actions taken by the applicant. Rather, the request is due to the poor condition of the trees. In addition, under Subsection (e)(3), I find that while 2 specimen trees are being removed, there is no direct impact to either the wetlands or stream, 4 specimen trees remain in the Southern Parcel, and 1.4 acres of forest will be protected in a Forest Buffer and Forest Conservation Easement. Having met the required factors in Subsections (d) and (e), I find that granting the special Variance will be consistent with the spirit and intent of Title 6. I also take judicial notice of the recommendation of DEPS which recommended approval of the Special Variance.

Affordable Housing.

There was a great deal of testimony from each Party as well as from interested citizens regarding affordable housing. The Voluntary Compliance Agreement (VCA) between the County and the NAACP (Prot. Ex. 51) was discussed and interpreted. From the Post Hearing Memorandums filed, one item that

the Parties agree on is that neither the BCC nor the BCZR differentiates between multifamily buildings with affordable units and multifamily buildings with market rate units. Indeed, they agree that the only place where affordable housing is mentioned is in the Tier Schedule for Local Open Space fees-in-lieu waiver which provides a fee of $0.00 for affordable housing units. (BCC, §32-6-108). Accordingly, the testimony concerning the pros and cons of affordable housing are not found within the development regulations and applicable policies, rules and regulations under BCC, §32-4-229 and will be considered background information in this case.

As previously noted, approval of the apartment building on the Northern Parcel will eliminate the development potential on the Southern Parcel. As discussed above, the Southern Parcel is included within Map 21 of Towson Community Plan and the Design Plan therein envisioned affordable housing, apartment buildings for the Southern Parcel. (Dev. Ex. 5) (Towson Community Plan, pp. 71, 74). Specifically, the Towson Community Plan states that within East Towson Community Area: "Infill affordable housing is the *preferred use* within the plan area." It expressly defined 'Affordable Housing for the East Towson Community' as:

> housing affordable to households with income at or below 80 percent of the Baltimore area median income. For a family of hour that this income limit would currently be $34,800.00. Affordability would generally be determined through the proportion of monthly income required for housing, which should not exceed 30-35 percent.

(Id. at p.80). The Towson Community Plan also declared that "*group-house apartment buildings, garden apartment buildings, and other apartment buildings*" were permitted within the East Towson Community Conservation Area (Map 21). (Towson Community Plan, p. 81). The Towson Community Plan expressly encourages the assembly of lots for the purpose of constructing affordable housing. (*Id.* at p. 84).

Upon review of the Towson Community Plan and its design for East Towson neighborhood, affordable housing development on vacant parcels was determined to be the ***preferred use*** given the primary objective of the residents of East Towson was to stabilize the neighborhood. (Towson Community Plan, p. 73). Given this detailed vision for the development of the vacant Southern Parcel, the approval of the apartment building on the Northern Parcel becomes even more imperative to perpetual preservation of the Southern Parcel.

CONCLUSION

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

ORDER

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **8th day** of **March, 2021,** that the Redlined Development Plan (Dev. Ex. 1) and the Greenlined Development Plan (Dev. Ex. 24A-E) otherwise known as **"RED MAPLE PLACE"** Plan, be and the same are hereby is **APPROVED.**

IT IS FURTHER ORDERED that the Application for Special Variance pursuant to BCC, §33-6-116 to allow the removal of two (2) specimen trees as depicted on Exhibit A to Accompany a Special Variance Request (Dev. Ex. 11) be and it is hereby **GRANTED.**

ORDER RECEIVED FOR FILING
Date 3/8/21
By DMugnon

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm

ORDER RECEIVED FOR FILING
Date 3/8/21
By DMarion

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

address 407 East Joppa Road **which is presently zoned** RAE, DR 10.5

Deed Reference 37310 / 116 and 6426/536 10 Digit Tax Account # 1 9 0 0 0 0 7 8 7 7 0 9 0 3 8 4 7 0 2 0

Property Owner(s) Printed Name(s) See attached

CASE NUMBER 2020-0267-A **Filing Date** 10/29/20 **Estimated Posting Date** ___/___/_____ **Reviewer** SL

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. ____ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

3. X **a Variance** from Section(s)

See Attached

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "To Be Presented At Hearing". If you need additional space, you may add an attachment to this petition)**

To be presented at the hearing.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), 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.
Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

Red Maple Place Limited Partnership
Name- Type or Print

Signature

318 Sixth Street, Suite 2, Annapolis MD
Mailing Address City State

21403 / 443-221-2708 / dana@homesforamerica.org
Zip Code Telephone # Email Address

Legal Owners:

See Attached /
Name #1 – Type or Print Name #2 – Type or Print

/
Signature #1 Signature # 2

Mailing Address City State

/ /
Zip Code Telephone # Email Address

Attorney for Petitioner:

Christopher D. Mudd
Name- Type or Print

Signature

210 W. Pennsylvania Avenue, Towson MD
Mailing Address City State

21204 / 410-494-6365 / cdmudd@venable.com
Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 3-8-21
By

Representative to be contacted:

Christopher D. Mudd
Name – Type or Print

Signature

210 W. Pennsylvania Avenue, Towson MD
Mailing Address City State

21204 / 410-494-6365 / cdmudd@venable.com
Zip Code Telephone # Email Address

REV. 2/23/11

2020-0267-A
No review

Petition for Variance

Red Maple Place
407 East Joppa Road

Legal Owner:

Tax Account 1900007877

Cuba Land LLC
1205 York Road
Timonium, Maryland 21093

Signature: _____
Printed Name: Samuel J. Mangione
Title: Manager

Legal Owner:

Tax Account 0903847020

York Road Associates
1205 York Road
Timonium, Maryland 21093

Signature: _____
Printed Name: Samuel J. Mangione
Title: Partner

Petition for Variance

Red Maple Place
407 East Joppa Road

Petition for Variance, pursuant to Section 307.1 of the Baltimore County Zoning Regulations (BCZR), if necessary, to allow a maximum building height of 45.5 feet (with a 10 foot extension for the stair tower for maintenance access to the roof) in lieu of the maximum height of 30 feet per BCZR Section 201.3.A (Council Bill No. 107-20).

October 26, 2020

PROPERTY DESCRIPTION

(For Zoning Purposes Only)

Beginning for the same at a point on the southerly side of Joppa Road at the beginning of that thirdly described parcel of land in a Deed dated January 1, 2016, as recorded among the Land Records of Baltimore County, Maryland in Liber J.L.E. No. 37310 folio 116, thence binding on the outline of said Deed, as now surveyed, with all bearings referenced to the Maryland Coordinate System, NAD 83, the following three (3) courses and distances:

1. South 75°32'03" East 172.59 feet to a point; thence,
2. Southeasterly 16.42 feet by a curve to the right, having a radius of 2,821.79 feet and a chord bearing South 75°22'03" East 16.42 feet to an iron pipe (found), thence leaving said Joppa Road,
3. South 20°55'50" West 301.88 feet to a concrete monument (found), thence binding on the Sixth or South 63°07' East 63.2 foot line as described in a Deed dated August 17, 1982, as recorded in the Land Records of Baltimore County, Maryland in Liber E.H.K., Jr. No. 6426 folio 536, which was conveyed by H.S. Taylor White, III to York Road Associates, and continuing on the outline of said Deed, the following seven (7) courses and distances:
4. South 69°59'32" East 63.33 feet to an iron pipe (found); thence,
5. South 11°10'10" West 320.97 feet to a concrete nail in a wall at the northerly side of Pennsylvania Avenue, thence binding on said Avenue,

6. North 78°53'01" West 202.44 feet to an iron bar (found),

7. North 14°04'28" East 184.83 feet to a point; thence,

8. North 79°00'32" West 50.00 feet to a point; thence,

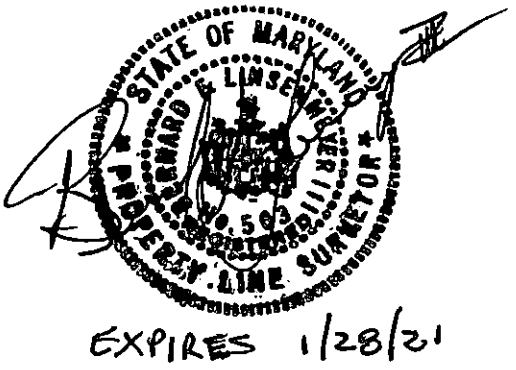
9. North 14°04'28" East 45.42 feet to a stone (found); thence,

10. South 74°08'32" East 23.76 feet to an iron pipe (found), thence binding on the last or North 13°47'52" East 411.89 foot line of the firstly mentioned Deed

11. North 13°32'04" East 411.81 feet to the point of beginning.

Containing 2.76 acres of land, more or less.

Located within the Ninth Election District and Fifth Councilmanic District of Baltimore County, Maryland.



EXPIRES 1/28/21

2020-0267-A

REQUEST FOR COMBINED HEARING

Please combine the zoning hearing on the Petition for Variance for 407 East Joppa Road with the Hearing Officer's Hearing on the **Red Maple Place** Development Plan (PAI# 09-0866), scheduled for hearing on November 19, 2020, beginning at 9:00 am.

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

address 407 East Joppa Road **which is presently zoned** RAE, DR 10.5

Deed Reference 37310 / 116 and 6426/536 10 Digit Tax Account # 1 9 0 0 0 0 7 8 7 7 0 9 0 3 8 4 7 0 2 0

Property Owner(s) Printed Name(s) See attached

CASE NUMBER 2020-0267-A **Filing Date** 10/29/20 **Estimated Posting Date** __/__/____ **Reviewer** JF

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

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See Attached

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "To Be Presented At Hearing". If you need additional space, you may add an attachment to this petition)**

To be presented at the hearing.

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I, or we, agree to pay expenses of above petition(s), 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.
Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

Red Maple Place Limited Partnership
Name- Type or Print

Signature

318 Sixth Street, Suite 2, Annapolis MD
Mailing Address City State

21403 / 443-221-2708 / dana@homesforamerica.org
Zip Code Telephone # Email Address

Legal Owners:

See Attached /
Name #1 – Type or Print Name #2 – Type or Print

/
Signature #1 Signature # 2

Mailing Address City State

/ /
Zip Code Telephone # Email Address

Attorney for Petitioner:

Christopher D. Mudd
Name- Type or Print

Signature

210 W. Pennsylvania Avenue, Towson MD
Mailing Address City State

21204 / 410-494-6365 / cdmudd@venable.com
Zip Code Telephone # Email Address

Representative to be contacted:

Christopher D. Mudd
Name – Type or Print

Signature

210 W. Pennsylvania Avenue, Towson MD
Mailing Address City State

21204 / 410-494-6365 / cdmudd@venable.com
Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 3-8-21
By DJ

REV. 2/23/11

2020-0267-A
No Review
Dropped

Petition for Variance

Red Maple Place
407 East Joppa Road

Legal Owner:

Tax Account 1900007877

Cuba Land LLC
1205 York Road
Timonium, Maryland 21093

Signature: _____
Printed Name: Samuel J. Mangione
Title: Manager

Legal Owner:

Tax Account 0903847020

York Road Associates
1205 York Road
Timonium, Maryland 21093

Signature: _____
Printed Name: Samuel J. Mangione
Title: Partner

Petition for Variance

Red Maple Place
407 East Joppa Road

Petition for Variance, pursuant to Section 307.1 of the Baltimore County Zoning Regulations (BCZR), if necessary, to allow a maximum building height of 45.5 feet (with a 10 foot extension for the stair tower for maintenance access to the roof) in lieu of the maximum height of 30 feet per BCZR Section 201.3.A (Council Bill No. 107-20).

2020-0267-A
Drop off
No review

October 26, 2020

PROPERTY DESCRIPTION

(For Zoning Purposes Only)

Beginning for the same at a point on the southerly side of Joppa Road at the beginning of that thirdly described parcel of land in a Deed dated January 1, 2016, as recorded among the Land Records of Baltimore County, Maryland in Liber J.L.E. No. 37310 folio 116, thence binding on the outline of said Deed, as now surveyed, with all bearings referenced to the Maryland Coordinate System, NAD 83, the following three (3) courses and distances:

1. South 75°32'03" East 172.59 feet to a point; thence,
2. Southeasterly 16.42 feet by a curve to the right, having a radius of 2,821.79 feet and a chord bearing South 75°22'03" East 16.42 feet to an iron pipe (found), thence leaving said Joppa Road,
3. South 20°55'50" West 301.88 feet to a concrete monument (found), thence binding on the Sixth or South 63°07' East 63.2 foot line as described in a Deed dated August 17, 1982, as recorded in the Land Records of Baltimore County, Maryland in Liber E.H.K., Jr. No. 6426 folio 536, which was conveyed by H.S. Taylor White, III to York Road Associates, and continuing on the outline of said Deed, the following seven (7) courses and distances:
4. South 69°59'32" East 63.33 feet to an iron pipe (found); thence,
5. South 11°10'10" West 320.97 feet to a concrete nail in a wall at the northerly side of Pennsylvania Avenue, thence binding on said Avenue,

2020-0267-A

6. North 78°53'01" West 202.44 feet to an iron bar (found),

7. North 14°04'28" East 184.83 feet to a point; thence,

8. North 79°00'32" West 50.00 feet to a point; thence,

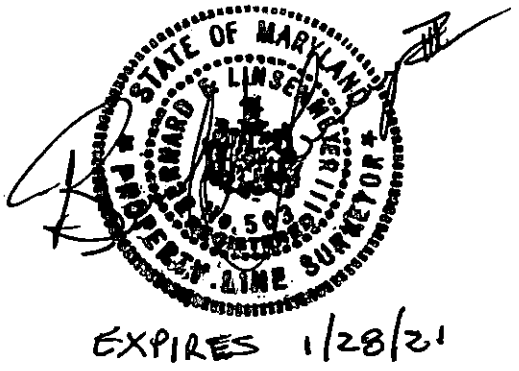
9. North 14°04'28" East 45.42 feet to a stone (found); thence,

10. South 74°08'32" East 23.76 feet to an iron pipe (found), thence binding on the last or North 13°47'52" East 411.89 foot line of the firstly mentioned Deed

11. North 13°32'04" East 411.81 feet to the point of beginning.

Containing 2.76 acres of land, more or less.

Located within the Ninth Election District and Fifth Councilmanic District of Baltimore County, Maryland.



2020-0867-A

REQUEST FOR COMBINED HEARING

Please combine the zoning hearing on the Petition for Variance for 407 East Joppa Road with the Hearing Officer's Hearing on the **Red Maple Place** Development Plan (PAI# 09-0866), scheduled for hearing on November 19, 2020, beginning at 9:00 am.

Donna Mignon

From: Donna Mignon
Sent: Monday, March 8, 2021 12:13 PM
To: 'cdmudd@venable.com'; 'amrosenblatt@venable.com'; 'michael@mmccannlaw.net'
Cc: 'afriedman@profilepr.com'; 'amrosenblatt@venable.com'; 'profilepr@aol.com'; Andrew Fish; 'asfugett@gmail.com'; 'barbara@neighborspacebaltimorecounty.org'; 'bsamuels72 @gmail.com'; 'bethbonemiller@gmail.com'; 'carolall@me.com'; 'cjohnson@hprplaw.or'; 'cathiforbes1@gmail.com'; 'cdmudd@venable.com'; 'dana@homesforamerica.org'; 'djoleary@esd-associates.com'; 'david.riley@verizon.net'; 'dsthaler@dsthaler.com'; 'tdeville@baltsun.com'; 'jones.d.g@gmail.com'; 'spicearoni@gmail.com'; 'diane@homesforamerican.org'; 'donnabowen2013@comcast.net'; 'eirwin@balitmorecountymd.gov'; 'gshaffer@baltimorecountmd.gov'; 'gregory.friedman25@gmail.com'; 'henry.callegary@gmail.com'; 'hwilliams@imagemd.org'; 'huthwalsh1@yahoo.com'; Jenifer G. Nugent; 'jew333 @msn.com'; 'jpatterson@mghus.com'; 'ariesei21@gmail.com'; 'kward@dsthaler.com'; Kui Zhao; Laurie Hay; 'eerrickson@balitmorecountymd.gov'; 'marshasmclaughlin@gmail.com'; 'melissabadeker@gmail.com'; 'michael@mccannlaw.net'; 'michael@mmccannlaw.net'; 'michele.yendell@comcast.net'; 'paris1246@gmail.com'; 'mcornelius@trafficgroup.com'; Milana Vayner; 'nrgoldring@gmail.com'; 'nwhorst@gmail.com'; 'patricialott@gmail.com'; 'pnrichkus@aol.com'; 'philiptyler446@yahoo.com'; 'pael173@yahool.com'; 'rwernsdorfer@gmail.com'; 'scollins@towson.edu'; 'samm@mfe.bz'; 'smcarthur@dsthaler.com'; Steve Lafferty; 'csparts@verizon.net'; 'sroyer124@gmail.com'; 'vhomes3@gmail.com'; 'wschwarz@mdlynchingmemorial.org'
Subject: Red Maple Place - 407 E. Joppa Road - Case No: 09-0866 and 2020-0267-A(withdrawn)
Attachments: Order - Red Maple Place - 09-0866.pdf

Good Afternoon,
Please find attached the Opinion and Order in regard to the above-referenced matter.

Donna Mignon, Legal Assistant
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

JOHN A. OLSZEWSKI, JR.
County Executive

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

March 8, 2021

cdmudd@Venable.com
Christopher D. Mudd, Esq.
amrosenblatt@venable.com
Adam Rosenblatt, Esq.

michael@mmccannlaw.net
Michael R. McCann, Esq.

RE: Development Plan & Zoning – Case Nos. 09-0866 and 2020-0267-A (Withdrawn)
Project: RED MAPLE PLACE
Address: 407 E. Joppa Rd., 21286

Dear Counsels:

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

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

Sincerely,

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlw
Enclosure

c: *See Email Addresses Next Page*

ORDER RECEIVED FOR FILING
Date 3/8/21
By D'Regnon

A Friedman	afriedman@profilespr.co
Amy Elias	profilepr@aol.com
Andrew Fish	afish@baltimorecountymd.gov
Anthony Fugett	asfugett@gmail.com
Barbara Hopkins	barbara@neighborspacebaltimorecounty.org
Barbara Samuels	bsamuels72@gmail.com
Beth Miller	bethbonemiller@gmail.com
Carol Allen	carolall@me.com
Carolyn Johnson	cjohnson@hprplaw.or
Cathi Forbes	cathiforbes1@gmail.com
Dana Johnson	dana@homesforamerica.org
Daniel O'Leary	djoleary@esd-associates.com
David Riley	david.riley@verizon.net
David Thaler	dsthaler@dsthaler.com
David Truscello	tdeville@baltsun.com
Davis Jones	jones.d.g@gmail.com
Deborah Kleinmann	spicearoni@gmail.com
Diane Clyde	diane@homesforamerican.org
Elizabeth Irwin	eirwin@balitmorecountymd.gov
Glenn Shaffer	gshaffer@baltimorecountmd.gov
Gregory Friedman	gregory.friedman25@gmail.com
Henry Callegary	henry.callegary@gmail.com
Hindley Williams	hwilliams@imagemd.org
Jane Huth	huthwalsh1@yahoo.com
Jen Frankovich	jfrankovich@baltimorecountymd.gov
Jenifer Nugent	jnugent@baltimorecountymd.gov
Joanne Williams	jew333@msn.com
John Patterson	jpatterson@mghus.com
Kia Banks	ariesei21@gmail.com
Kiel Ward	kward@dsthaler.com
Kui Zhao	kzhao@baltimorecountymd.gov
Laurie Hay	lhay@baltimorecountymd.gov
Libby Errickson	eerrickson@balitmorecountymd.gov
Marsha McLaughlin	marshasmclaughlin@gmail.com
Melissa Badeker	melissabadeker@gmail.com
Michele Yendell	michele.yendell@comcast.net
Michele Yendell-	paris1246@gmail.com
Mickey Cornelius	mcornelius@trafficgroup.com
Milana Vayner	mvayner@baltimorecountymd.gov
Nancy Goldring	nrgoldring@gmail.com
Nancy Horst	nwhorst@gmail.com
Patricia Lott	patricialott@gmail.com
Peta richkus	pnrichkus@aol.com
Philip Tyler	philiptyler446@yahoo.com
Phoebe Evans Letocha	pael173@yahool.com
Roven Wernsdorfer	rwernsdorfer@gmail.com
Sam Collins	scollins@towson.edu
Sam Mangione	samm@mfe.bz

ORDER RECEIVED FOR FILING

Date 3/8/21

By DMugnon

Stacy McArthur	smcarthur@dsthaler.com
Steve Lafferty	slafferty@baltimorecountymd.gov
Susan Parts	csparts@verizon.net
Suzanne Royer	sroyer124@gmail.com
Vicky Grimes	vhomes3@gmail.com
Will Schwarz	wschwarz@mdlynchingmemorial.org

ORDER RECEIVED FOR FILING
Date 3/8/21
By DRMugnon

GROSS PRICE * : **$319.09**

PACKAGE NAME: BSMG Legal Notices

Product(s): The Baltimore Sun, Affidavit, classified.MDDC.com_TBS
AdSize(s): 1 Column (8BRD)
Run Date(s): Friday, October 30, 2020
Color Spec. B/W

Preview

Baltimore County
NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a virtual hearing for the property identified herein as follows: CASE NUMBER: 2020-0267-A, 407 E. Joppa Road, 9th Election District - 5th Councilmanic District, Legal Owners: Cuba Land LLC & York Road Associates; Contract Purchaser: Red Maple Place Limited Partnership. Variance, pursuant to Section 307.1 of the Baltimore County Zoning Regulations (BCZR), if necessary, to allow a maximum building height of 45.5 feet (with a 10 foot extension for the stair tower for maintenance access to the roof) in lieu of the maximum height of 30 feet per BCZR Section 201.3.A (Council Bill No. 107-20). Hearing: Thursday, November 19, 2020 at 9:00 a.m. For information on how to participate in the hearings please go to www.baltimorecountymd/gov/adminhearings no later than 48 hours prior to the hearing. You will be asked to provide your contact information and the case number provided above. You may also call 410-887-3868, ext. 0. Michael Mallinoff Director of Permits, Approvals and Inspections for Baltimore County.
10/30/2020 6804971

CERTIFICATE OF POSTING

2020-0267-A

RE: Case No.: _____

Petitioner/Developer: _____

Red Maple Place Limited Partnership

November 19, 2020

Date of Hearing/Closing: _____

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

Attn: Kristen Lewis:

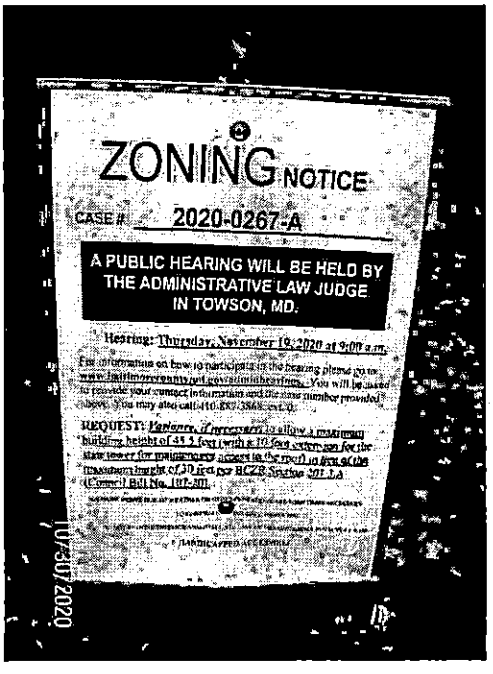
Ladies and Gentlemen:

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: _____

413 E. Pennsylvania Road and 407 E. Joppa Road **SIGN 1**

October 30, 2020

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

October 30, 2020

(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)

CERTIFICATE OF POSTING

2020-0267-A

RE: Case No.: _____

Petitioner/Developer: _____

Red Maple Place Limited Partnership

November 19, 2020

Date of Hearing/Closing: _____

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

Attn: Kristen Lewis:

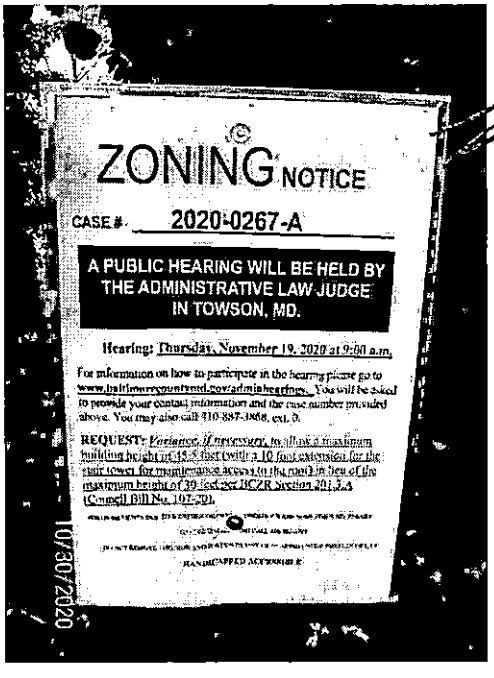
Ladies and Gentlemen:

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: _____

413 E. Pennsylvania Road and 407 E. Joppa Road **SIGN 2**

October 30, 2020

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

October 30, 2020

(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)

Kristen L Lewis

From: Malone, Patricia A. <PAMalone@Venable.com>
Sent: Thursday, October 29, 2020 3:37 PM
To: Robinson, Drew; Kristen L Lewis; Lloyd Moxley; Jerry S Chen
Cc: Jenae Johnson
Subject: RE: Variance Hearing Added to Development Plan Hearing (Red Maple Place)

Also, we are having the requisite advertisement run in *The Baltimore Sun* tomorrow and are having the property posted tomorrow.

Patsy

Patricia A. Malone, Esq. | Venable LLP
t 410.494.6206 | f 410.821.0147 | m 410.627.6014
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204

PAMalone@Venable.com | http://secure-web.cisco.com/1GLeRB4SPW-0Dp1W_EWuPR4dbFwNLVfWL3qP4UZYdiC50LTo5XMcgz_yg4tPCNYJbPo1wetOnMHVYGvt6bSekvkZVZVqQpJSGjWKlZcL-yikFrCZUGy7GdEWdv7RfjAB4PC3fCTrSSWTnVCsjGtGBf5-eWRUhN57dNtrajLbA6vAphHPJ9sCI6Gr8aiqW9BGiKeeOz9uGX-UlPckOBBOfK-EilHNGfHE3nqYOIsILGihI1r-5mhC-wX-uzheIP_KZ0iEvldZHgl6uvT6r2GIYT9hbsNZmiz9ZcD3MT8zE_hvJU6sq89M2fWR-hYpdvP3qUY3IlrJffGbDZ-M8pU0vJO3UiE8mbCk0CaAW0XkiC20vU0vPcu9yt9JSQrfvmMnLB4JBQ6X721nkb10FAuTiYcW7zLsLDRI49jwakqI_ZgFfpvGrDsK6r3zVo45xJcO0qtdfeX-WDXQWjM5UU9BCfQ/http%3A%2F%2Fwww.Venable.com

---

From: Robinson, Drew <CARobinson@Venable.com>
Sent: Thursday, October 29, 2020 3:25 PM
To: Kristen L Lewis <klewis@baltimorecountymd.gov>; Lloyd Moxley <lmoxley@baltimorecountymd.gov>; Jerry S Chen <jchen@baltimorecountymd.gov>
Cc: Jenae Johnson <jnjohnson@baltimorecountymd.gov>; Malone, Patricia A. <PAMalone@Venable.com>
Subject: Variance Hearing Added to Development Plan Hearing (Red Maple Place)

All,

Good afternoon. Per Kristen's instructions, I'm reaching out to let you all know that we have filed for a variance hearing and requested it be added to the previously-scheduled development plan hearing for Red Maple Place. The information for the development plan hearing is as follows:

PROPERTY LOCATION: 407 E. Joppa Road
Meeting Location: WebEx conducted by the Office of Administrative Hearings
PAI Number: 09–0866
Tracking Number: MAJ–2019–00004
Proposal: 54 apartments
Thursday, November 19, 2020 at 9:00am

The variance requested has been assigned Case No. 2020-0267-A and the request itself is below. We filed the requisite variance petition package materials yesterday.

REQUEST: Variance, if necessary, to allow a maximum building height of 45.5 feet (with a 10 foot extension for the stair tower for maintenance access to the roof) in lieu of the maximum height of 30 feet per BCZR Section 201.3.A (Council Bill No. 107-20).

Please let me know if you have any questions or need anything further.

Thanks,

Drew

C. Andrew Robinson, Esq. | Venable LLP
t 410.494.6279 | f 410.821.0147 | m 443.600.0302
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204

CARobinson@Venable.com | http://secure-web.cisco.com/1GLeRB4SPW-0Dp1W_EWuPR4dbFwNLVfWL3gP4UZYdiC50LTo5XMcgz_yg4tPCNYJbPo1wetOnMHVYGvt6bSekvkZVZVqQpJSGjWKlZcL-yikFrCZUGy7GdEWdv7RfjAB4PC3fCTrSSWTnVCsjGtGBf5-eWRUhN57dNtrajLbA6vAphHPJ9sCl6Gr8aiqW9BGiKeeOz9uGX-UlPckOBBOfK-EilHNGfHE3nqYOlsILGihl1r-5mhC-wX-uzheIP_KZ0iEvldZHgl6uvT6r2GIYT9hbsNZmiz9ZcD3MT8zE_hvJU6sq89M2fWR-hYpdvP3qUY3IlrJffGbDZ-M8pU0vJO3UiE8mbCk0CaAW0XkiC20vU0vPcu9yt9JSQrfvmMnLB4JBQ6X721nkb10FAuTiYcW7zLsLDRI49jwakqI_ZgFfpvGrDsK6r3zVo45xJcO0qtdfeX-WDXQWjM5UU9BCfQ/http%3A%2F%2Fwww.Venable.com

Jenae Johnson

From: Jenae Johnson
Sent: Monday, November 09, 2020 12:25 PM
To: 'cdmudd@venable.com'
Cc: Donna Mignon; Debra Wiley; Kristen L Lewis
Subject: Case 2020-0267-A

Good afternoon,

Just and update again on what we need to complete your file for case number 2020-0267-A.

:Sign posting certificate
:The newspaper advertisement.

Have a great day,

Jenae Johnson

From: Mudd, Christopher D. <CDMudd@Venable.com>
Sent: Monday, November 09, 2020 1:14 PM
To: Jenae Johnson
Cc: Kristen L Lewis
Subject: RE:

Thanks Jenae – I'm working on pulling this information together.

Chris

Christopher D. Mudd, Esq. | Venable LLP
t 410.494.6365 | f 410.821.0147 | m 410.271.9105
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204

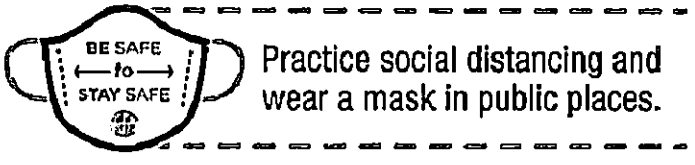
CDMudd@Venable.com | www.Venable.com

From: Jenae Johnson <jnjohnson@baltimorecountymd.gov>
Sent: Monday, November 9, 2020 1:04 PM
To: Mudd, Christopher D. <CDMudd@Venable.com>
Cc: Kristen L Lewis <klewis@baltimorecountymd.gov>
Subject:

Caution: External Email

Sorry to add one more thing can you please send me a copy of the document that you sent requesting the news paper or the sign posting as well.

Thank you,



CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

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 legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/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:

Case Number: 2020-0267-A

Property Address: 407 East Joppa Road

Property Description: 285'± east of Fairmount Avenue

Legal Owners (Petitioners): Cuba Land LLC and York Road Associates

Contract Purchaser/Lessee: Red Maple Place Limited Partnership

PLEASE FORWARD ADVERTISING BILL TO:

Name: Barbara Lukeserich

Company/Firm (if applicable): Venable LLP

Address: 210 W. Pennsylvania Avenue
Suite 500
Towson, Maryland 21204

Telephone Number: 410-494-6200

Revised 7/9/2015

2020-0867-A

REQUEST FOR COMBINED HEARING

Please combine the zoning hearing on the Petition for Variance for 407 East Joppa Road with the Hearing Officer's Hearing on the **Red Maple Place** Development Plan (PAI# 09-0866), scheduled for hearing on November 19, 2020, beginning at 9:00 am.

Donna Mignon

From: webmaster@baltimorecountymd.gov
Sent: Saturday, October 24, 2020 4:48 PM
To: Donna Mignon; Debra Wiley
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Marsha
Last Name	McLaughlin
Email	marshasmclaughlin@gmail.com
Phone	4102065478
Address	115 melancthon avenue
City	lutherville
State	Maryland
ZIP Code	21093
Case Number	PAI 09-0866
Scheduled Hearing Date	11/19/20

Donna Mignon

From: Jerry S Chen
Sent: Thursday, October 29, 2020 3:46 PM
To: Debra Wiley; Donna Mignon
Cc: Jenae Johnson; Malone, Patricia A.; Robinson, Drew; Lloyd Moxley; Kristen L Lewis; Jerry S Chen
Subject: RE: Variance Hearing Added to Development Plan Hearing (Red Maple Place)

FYI. See fwd.

Jerry Chen, Project Manager
Development Management
111 W. Chesapeake Ave, Rm 123
Towson, MD 21204
410-887-3321
jchen@baltimorecountymd.gov

From: Robinson, Drew [mailto:CARobinson@Venable.com]
Sent: Thursday, October 29, 2020 3:25 PM
To: Kristen L Lewis <klewis@baltimorecountymd.gov>; Lloyd Moxley <lmoxley@baltimorecountymd.gov>; Jerry S Chen <jchen@baltimorecountymd.gov>
Cc: Jenae Johnson <jnjohnson@baltimorecountymd.gov>; Malone, Patricia A. <PAMalone@Venable.com>
Subject: Variance Hearing Added to Development Plan Hearing (Red Maple Place)

All,

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PAI Number: 09–0866
Tracking Number: MAJ–2019–00004
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Please let me know if you have any questions or need anything further.

Thanks,

Drew

C. Andrew Robinson, Esq. | Venable LLP
t 410.494.6279 | f 410.821.0147 | m 443.600.0302
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204

CARobinson@Venable.com | http://secure-web.cisco.com/14VDdDn4kKEDT1l3cAnU3W4HF3Fi9bDYO_Ei1L1PbJKlK_uRaFPU_XuxE2-guKdg0eZmns6oE17IC8mTuAaYl_cchltuMPyKcy-upYA0SOkl8iY2d4ODozZ5__BDG8awtOfFeQUfgYg-lgNqpHTg4D-EVep2_XSpE3Db-lXXjnWWg9rdk90GPiX_cy-_qjh3wA5OuetFuPyULG7EqliGWOdwlGm1JkDUpWNXcmu3UbjhdlhrBpFFdyyaemy2a4AoMzYm-HeVqOlhq-KFWDzm6J-yxfnv9jSpcTWN5nXTQD01hKd862kJH8Q8Z8TJWz3jfTztzBjQzqd-X2beD39heH2bGYisJ6vXbEhCKzDHM0jWdQl53PvDTovhet8qmHjfkM_XN3rnSrf4iajPEZR_-WRvn7hwJ3w9-TFl4_jpoimf_MFCNxysdmujEoRGCUCKFc2eHyQnmvkbKsfw5SQ-TOg/http%3A%2F%2Fwww.Venable.com

11/19
9AM

Debra Wiley

RECEIVED
NOV 0 9 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

From: Robinson, Drew <CARobinson@Venable.com>
Sent: Monday, November 9, 2020 2:57 PM
To: Jenae Johnson; Mudd, Christopher D.; Malone, Patricia A.
Cc: Donna Mignon; Debra Wiley; Kristen L Lewis
Subject: RE: Case 2020-0267-A
Attachments: 6804971 proof.pdf; Cert 1 2020-0267-A.doc; Cert 2 2020-0267-A.doc

Jenae,

I have attached the posting certificates and the proof from the Baltimore Sun of the ad that was run.

Thanks,

Drew

From: Jenae Johnson <jnjohnson@baltimorecountymd.gov>
Sent: Monday, November 9, 2020 12:25 PM
To: Mudd, Christopher D. <CDMudd@Venable.com>
Cc: Donna Mignon <dmignon@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>
Subject: Case 2020-0267-A

Caution: External Email

Good afternoon,

Just and update again on what we need to complete your file for case number 2020-0267-A.

:Sign posting certificate
:The newspaper advertisement.

Have a great day,

Practice social distancing and wear a mask in public places.

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

THE BALTIMORE SUN MEDIA GROUP

Order ID: 6804971

* Agency Commission not included

GROSS PRICE * : **$319.09**

PACKAGE NAME: BSMG Legal Notices

VENABLE LLP

210 W. PENNSYLVANIA AVENUE SUITE 500 TOWSON, MD 21204
T 410.494.6200 F 410.821.0147 www.Venable.com

November 17, 2020

Christopher D. Mudd

T 410.494.6365
F 410.821.0147
CDMudd@Venable.com

Hon. Paul M. Mayhew
Managing Administrative Law Judge
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Red Maple Place Limited Partnership
407 E. Joppa Road
2020-267-A / PAI 09-0866
Voluntary Dismissal of Zoning Petition

Dear Judge Mayhew:

This firm represents the Developer/Petitioner in the above-referenced matter. In an abundance of caution, we proactively filed a petition for variance to address a potential new height limitation proposed by Baltimore County Council Bill 107-20. Last night that Bill failed. Accordingly, we are attaching to this letter a line voluntarily dismissing the petition for variance. The Hearing Officer's Hearing can proceed as scheduled without any combined zoning hearing.

Very truly yours,

Christopher D. Mudd

cc: Adam M. Rosenblatt, Esquire
Michael R. McCann, Esquire
J. Carroll Holzer, Esquire
Office of People's Counsel

IN RE: PETITION FOR VARIANCE	*	**BEFORE THE**
	*	**OFFICE OF**
(407 E. Joppa Road)	*	**ADMINISTRATIVE HEARINGS**
9th Election District		
5th Council District	*	**FOR BALTIMORE COUNTY**
Red Maple Place Limited Partnership	*	
	*	**Case No. 2020-067-A**
	*	

* *

LINE DISMISSING PETITION

Petitioner, by undersigned counsel, hereby voluntarily dismisses the above-captioned petition for variance without prejudice.

Respectfully submitted,

Christopher D. Mudd
Adam M. Rosenblatt
Venable LLP
210 W. Pennsylvania Ave., Suite 500
Towson, Maryland 21204
(410) 494-6200

Attorneys for Petitioner

VENABLE LLP

210 W. PENNSYLVANIA AVENUE SUITE 500 TOWSON, MD 21204
T 410.494.6200 F 410.821.0147 www.Venable.com

November 17, 2020

Christopher D. Mudd

T 410.494.6365
F 410.821.0147
CDMudd@Venable.com

Hon. Paul M. Mayhew
Managing Administrative Law Judge
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Red Maple Place Limited Partnership
407 E. Joppa Road
2020-267-A / PAI 09-0866
Voluntary Dismissal of Zoning Petition

Dear Judge Mayhew:

This firm represents the Developer/Petitioner in the above-referenced matter. In an abundance of caution, we proactively filed a petition for variance to address a potential new height limitation proposed by Baltimore County Council Bill 107-20. Last night that Bill failed. Accordingly, we are attaching to this letter a line voluntarily dismissing the petition for variance. The Hearing Officer's Hearing can proceed as scheduled without any combined zoning hearing.

Very truly yours,

Christopher D. Mudd

cc: Adam M. Rosenblatt, Esquire
Michael R. McCann, Esquire
J. Carroll Holzer, Esquire
Office of People's Counsel

IN RE: PETITION FOR VARIANCE	*	**BEFORE THE**
	*	**OFFICE OF**
(407 E. Joppa Road)	*	**ADMINISTRATIVE HEARINGS**
9th Election District **5th Council District**	*	**FOR BALTIMORE COUNTY**
Red Maple Place Limited Partnership	*	
	*	**Case No. 2020-067-A**
	*	

* *

LINE DISMISSING PETITION

Petitioner, by undersigned counsel, hereby voluntarily dismisses the above-captioned petition for variance without prejudice.

Respectfully submitted,

Christopher D. Mudd
Adam M. Rosenblatt
Venable LLP
210 W. Pennsylvania Ave., Suite 500
Towson, Maryland 21204
(410) 494-6200

Attorneys for Petitioner

11/9 & 11/20 Development Plan Hearing & Zoning

CASE NO. 2020-0207-A

CHECKLIST

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
_____	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	_____
_____	DEPS (if not received, date e-mail sent _____)	_____
_____	FIRE DEPARTMENT	_____
_____	PLANNING (if not received, date e-mail sent _____)	_____
11/10	STATE HIGHWAY ADMINISTRATION	No objection
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 10/30/20

SIGN POSTING (1st) Date: 10/30/20 by Sgt. Black

SIGN POSTING (2nd) Date: 11/14/20 by 11

PEOPLE'S COUNSEL APPEARANCE Yes ☑ No ☒

PEOPLE'S COUNSEL COMMENT LETTER Yes ☑ No ☒ People's Counsel Filed Ltr. 11/10/20

Comments, if any: Req. to Testify / Per Jamie No comments in time

11-19
9 Am

Debra Wiley

From: SGT ROBERT BLACK <1opie@comcast.net>
Sent: Monday, November 16, 2020 12:02 AM
To: Barbara Lukasevich; CARobinson@Venable.com; pamalone@venable.com; Administrative Hearings
Subject: Recertification's For 2020-0267-A
Attachments: Re-Cert 1 2020-0267-A.doc; Re-Cert 2 2020-0267-A.doc; Re-Cert Groups 1 & 2 2020-0267-A.doc

Recertification's for 413 E. Pennsylvania Road and 407 E. Joppa Road. Thanks.

CERTIFICATE OF POSTING

2020-0267-A

RE: Case No.: _____

Petitioner/Developer: _____

Red Maple Place Limited Partnership

November 19, 2020

Date of Hearing/Closing: _____

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

Attn: Kristen Lewis:

Ladies and Gentlemen:

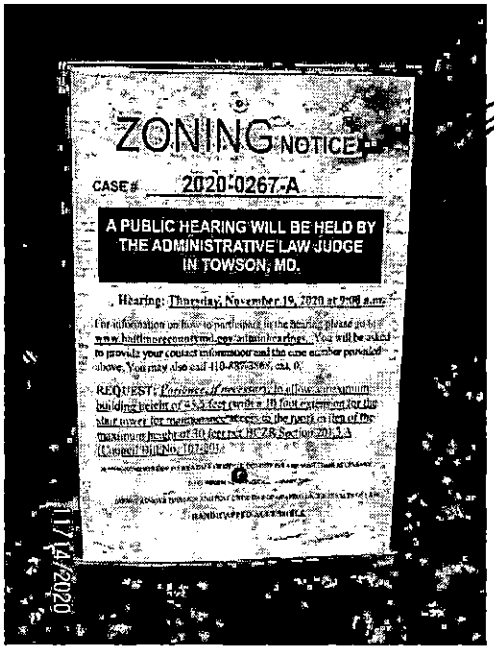
This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

413 E. Pennsylvania Road and 407 E. Joppa Road

SIGN 1 Recertification

October 30, 2020

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

November 14, 2020

(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)

CERTIFICATE OF POSTING

2020-0267-A

RE: Case No.: _____

Petitioner/Developer: _____

Red Maple Place Limited Partnership

November 19, 2020

Date of Hearing/Closing: _____

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

Attn: Kristen Lewis:

Ladies and Gentlemen:

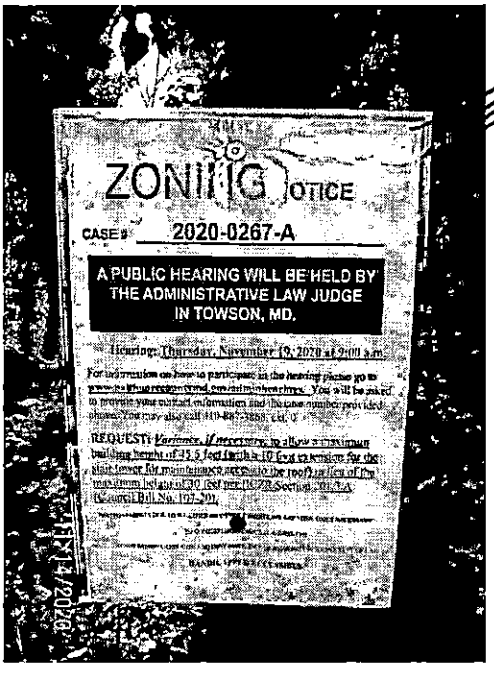
This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

413 E. Pennsylvania Road and 407 E. Joppa Road

SIGN 2 Recertification

October 30, 2020

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

November 14, 2020

(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)

CERTIFICATE OF POSTING

2020-0267-A

RE: Case No.: _____

Petitioner/Developer: _____

Red Maple Place Limited Partnership

November 19, 2020

Date of Hearing/Closing: _____

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

Attn: Kristen Lewis:

Ladies and Gentlemen:

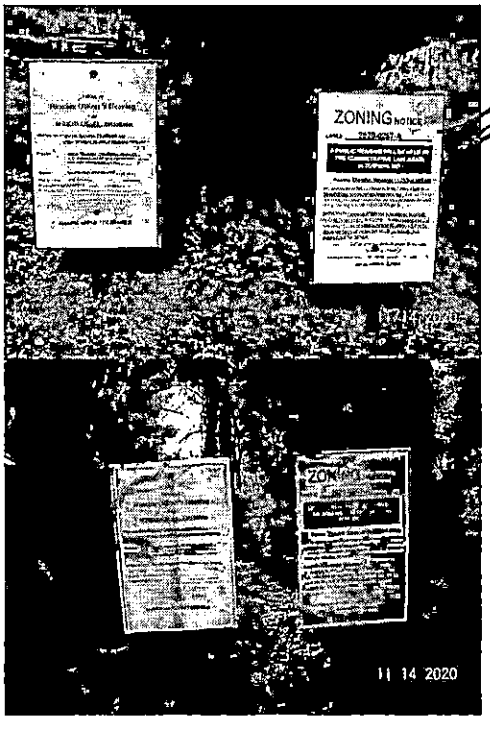
This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

413 E. Pennsylvania Road and 407 E. Joppa Road

Groups 1 & 2 Recertification

October 30, 2020

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

November 14, 2020

(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)

IN RE: DEVELOPMENT PLAN HEARING (407 E. Joppa Road/413 E. Pennsylvania Avenue) Red Maple Place	*	BEFORE THE
	*	OFFICE OF
Red Maple Place Limited Partnership *Developer*	*	ADMINISTRATIVE
	*	HEARINGS
	*	FOR
	*	BALTIMORE COUNTY
	*	Case nos.: PAI 09-0866

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

SUBPOENA DUCES TECUM

To: Lisa Eicholtz
Bureau of Engineering, Sewer Design
Baltimore County Dept. of Public Works
111 W. Chesapeake Avenue
Towson, Maryland 21204

You are hereby summoned and commanded to appear remotely, *via* WebEx, on the 19th day of November, 2020 at 9:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, 118 West Pennsylvania Avenue, Towson, Maryland 21204, (410) 825-2150 and bringing with you the documents identified in the Schedule of Documents below. For any questions regarding your remote appearance, please go to administrativehearings@baltimorecountymd.gov or call the Office of Administrative Hearings at (410) 887-3868.

Paul M. Mayhew
Administrative Law Judge

Dated: November 12, 2020

RECEIVED
NOV 13 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

SCHEDULE OF REQUESTED DOCUMENTS*

1. All documents comprising your file and the file of your Department for this matter.
2. All documents sent to or received from the developer or its representatives regarding this matter.
3. The Sewershed Repair, Replacement and Rehabilitation Plan, all appendices to that plan, and any other documents generated by the County's consultant, pursuant to the Consent Decree entered by the United States District Court for the District of Maryland in *United States et al. v. Baltimore County*, Case 1:05-cv-02028, for the sewershed in which the subject property lies.
4. The sewershed map for the sewershed in which the subject property lies, including any such map that shows the manholes from the subject property to the Baltimore City line.
5. All documents, including any computer-generated output, showing or relating to the capacity of sanitary sewer lines downstream of the subject property to the Baltimore City line.

*The terms "documents" and "files" include, without limitation, all papers, writings, drawings, graphs, charts, photographs, recordings, emails, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

Debra Wiley

From: Michael McCann <michael@mmccannlaw.net>
Sent: Friday, November 13, 2020 11:09 AM
To: Debra Wiley; Donna Mignon
Subject: Red Maple Place hearing
Attachments: 20201113111539940.pdf

Hi guys. Another subpoena for issuance.

Thank you.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

Debra Wiley

From: Debra Wiley
Sent: Friday, November 13, 2020 11:19 AM
To: 'Michael McCann'
Subject: RE: Red Maple Place hearing
Attachments: Message from "RNP002673F6C9D3"

Hi Michael,

Please find attached the signed subpoena.

Have a great weekend !

From: Michael McCann <michael@mmccannlaw.net>
Sent: Friday, November 13, 2020 11:09 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>; Donna Mignon <dmignon@baltimorecountymd.gov>
Subject: Red Maple Place hearing

Hi guys. Another subpoena for issuance.

Thank you.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

IN RE: DEVELOPMENT PLAN HEARING (407 E. Joppa Road/413 E. Pennsylvania Avenue) Red Maple Place	*	BEFORE THE
	*	OFFICE OF
Red Maple Place Limited Partnership *Developer*	*	ADMINISTRATIVE
	*	HEARINGS
	*	FOR
	*	BALTIMORE COUNTY
	*	Case nos.: PAI 09-0866

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

SUBPOENA DUCES TECUM

To: Marta Kulchytska
Baltimore County Office of Planning
105 W. Chesapeake Avenue
Towson, Maryland 21204

You are hereby summoned and commanded to appear remotely, *via* WebEx, on the 19th day of November, 2020 at 9:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, 118 West Pennsylvania Avenue, Towson, Maryland 21204, (410) 825-2150 and brining the documents identified in the Schedule of Documents below. For any questions regarding your remote appearance, please go to administrativehearings@baltimorecountymd.gov or call the Office of Administrative Hearings at (410) 887-3868.

Administrative Law Judge

Dated: November 12, 2020

RECEIVED
NOV 12 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

SCHEDULE OF REQUESTED DOCUMENTS*

1. All documents comprising your file and the file of your Department for this matter.
2. All documents sent to or received from the developer or its representatives regarding this matter.

*The terms "documents" and "files" include, without limitation, all papers, writings, drawings, graphs, charts, photographs, recordings, emails, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

IN RE: DEVELOPMENT PLAN HEARING (407 E. Joppa Road/413 E. Pennsylvania Avenue) Red Maple Place	*	BEFORE THE
	*	OFFICE OF
Red Maple Place Limited Partnership *Developer*	*	ADMINISTRATIVE
	*	HEARINGS
	*	FOR
	*	BALTIMORE COUNTY
	*	Case nos.: PAI 09-0866

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

SUBPOENA DUCES TECUM

To: Lisa Eicholtz
Bureau of Engineering, Sewer Design
Baltimore County Dept. of Public Works
111 W. Chesapeake Avenue
Towson, Maryland 21204

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Administrative Law Judge

Dated: November 12, 2020

SCHEDULE OF REQUESTED DOCUMENTS*

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2. All documents sent to or received from the developer or its representatives regarding this matter.
3. The Sewershed Repair, Replacement and Rehabilitation Plan, all appendices to that plan, and any other documents generated by the County's counsultant for the Herring Run Sewershed pursuant to the Consent Decree entered by the United States District Court for the District of Maryland in *United States et al. v. Baltimore County*, Case 1:05-cv-02028.
4. The sewershed map for the Herring Run Sewershed, including any such map that shows the manholes from the subject property to the Baltimore City line.
5. All documents, including any computer-generated output, showing or relating to the capacity of sanitary sewer lines downstream of the subject property to the Baltimore City line.

*The terms "documents" and "files" include, without limitation, all papers, writings, drawings, graphs, charts, photographs, recordings, emails, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

IN RE: DEVELOPMENT PLAN HEARING (407 E. Joppa Road/413 E. Pennsylvania Avenue) Red Maple Place	*	BEFORE THE
	*	OFFICE OF
Red Maple Place Limited Partnership *Developer*	*	ADMINISTRATIVE
	*	HEARINGS
	*	FOR
	*	BALTIMORE COUNTY
	*	Case nos.: PAI 09-0866

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

SUBPOENA DUCES TECUM

To: James Hermann
Baltimore County Bureau of Development Plans Review
Dept. of Recreation and Parks
111 W. Chesapeake Avenue
Towson, Maryland 21204

You are hereby summoned and commanded to appear remotely, *via* WebEx, on the 19th day of November, 2020 at 9:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, 118 West Pennsylvania Avenue, Towson, Maryland 21204, (410) 825-2150 and bringing with you the documents identified in the Schedule of Documents below. For any questions regarding your remote appearance, please go to administrativehearings@baltimorecountymd.gov or call the Office of Administrative Hearings at (410) 887-3868.

Administrative Law Judge

Dated: November 12, 2020

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IN RE: DEVELOPMENT PLAN HEARING (407 E. Joppa Road/413 E. Pennsylvania Avenue) Red Maple Place	*	BEFORE THE
	*	OFFICE OF
Red Maple Place Limited Partnership *Developer*	*	ADMINISTRATIVE
	*	HEARINGS
	*	FOR
	*	BALTIMORE COUNTY
	*	Case nos.: PAI 09-0866

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

SUBPOENA DUCES TECUM

To: Glenn Shaffer
Department of Environmental Protection and Sustainability
111 W. Chesapeake Avenue
Towson, Maryland 21204

You are hereby summoned and commanded to appear remotely, *via* WebEx, on the 19th day of November, 2020 at 9:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, 118 West Pennsylvania Avenue, Towson, Maryland 21204, (410) 825-2150 and bringing the documents identified in the Schedule of Documents below. For any questions regarding your remote appearance, please go to administrativehearings@baltimorecountymd.gov or call the Office of Administrative Hearings at (410) 887-3868.

Administrative Law Judge

Dated: November 12, 2020

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Edit Panelist Invitation List

You can select contacts from an existing address book, import a Comma or Tab Delimited file (file contains non-ASCII characters, use a Unicode file delimited either by commas or tabs) or add new contacts. Note that the number of invitation emails cannot exceed 10000.

Select Contacts... Import Contacts...

Panelists to Invite

Name	Email address	Phone number	Language	Time Zone	Locale
Deb Wiley (Alternate Host)	dwiley@baltimorecountymd.gov	1-	English	New York Time	U.S.
Henry Akwah (Alternate Host)	hayakwah@baltimorecountymd.gov	1-	English	New York Time	U.S.
Maureen E. Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	English	New York Time	U.S.
Adam Rosenblatt	amrosenblatt@venable.com	1-	English	New York Time	U.S.
Christopher Mudd	cdmudd@venable.com	1-	English	New York Time	U.S.
Dana Johnson	dana@homesforamerica.org	1-	English	New York Time	U.S.
David Thaler	dsthaler@dsthaler.com	1-	English	New York Time	U.S.
Diane Clyde	diane@homesforamerican.org	1-	English	New York Time	U.S.
Heather Wirth	heatherwirth@comcast.net	1-	English	New York Time	U.S.
James Hermann	jhermann@baltimorecountymd.gov	1-	English	New York Time	U.S.
Jeff Livingston	jlivingston@baltimorecountymd.gov	1-	English	New York Time	U.S.
Jenifer Nugent	jnugent@baltimorecountymd.gov	1-	English	New York Time	U.S.
Jerry Chen	jchen@baltimorecountymd.gov	1-	English	New York Time	U.S.
Jim Mostsco	jmotsco@dshaler.com	1-	English	New York Time	U.S.
Jos Venturina	jventurina@baltimorecountymd.gov	1-	English	New York Time	U.S.
Lachelle Imwiko	limwiko@baltimorecountymd.gov	1-	English	New York Time	U.S.
Lloyd Moxley	lmoxley@baltimorecountymd.gov	1-	English	New York Time	U.S.
Marsha McLaughlin	marshamclaughlin@gmail.com	1-	English	New York Time	U.S.
Marta Kulchytska	mkulchytska@baltimorecountymd.gov	1-	English	New York Time	U.S.
Michael McCann	michael@mmccannlaw.net	1-	English	New York Time	U.S.
Mickey Cornelius	mcornelius@trafficgroup.com	1-	English	New York Time	U.S.
Mike Vaszil	mvaszil@dsthaler.com	1-	English	New York Time	U.S.
PAI Conference Room	pai-cobconfrm110@baltimorecountymd.gov	1-	English	New York Time	U.S.
Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	English	New York Time	U.S.
Ros Johnson	rvjohnson@baltimorecountymd.gov	1-	English	New York Time	U.S.
Stacy McArthur	smcarthur@dsthaler.com	1-	English	New York Time	U.S.
Stephen Ford	sford@baltimorecountymd.gov	1-	English	New York Time	U.S.
Vishnubhai Desai	vdesai@baltimorecountymd.gov	1-	English	New York Time	U.S.
Nancy Goldring	nrgoldring@gmail.com	1-	English	New York Time	U.S.
Michele Yendall	michele.yendall@comcast.net	1-	English	New York Time	U.S.
Philip Tyler	philiptyler446@yahoo.com	1-	English	New York Time	U.S.
Beth Miller	bethbonemiller@gmail.com	1-	English	New York Time	U.S.
Dan O'Leary	djoleary@esd-associates.com	1-	English	New York Time	U.S.

Invite Select All Clear All Delete Cancel

New Panelist

Full name: (required)

Email address: (required)

Phone number: Country/Region: 1 Number (with area/city code):

Time Zone: New York (Eastern Standard Time, GMT-05:00)

Language: English

Locale: U.S.

☐ Add new panelist in my address book

☐ Invite as alternate host

Add to Invitation List

Donna Mignon

From: Michael McCann <michael@mmccannlaw.net>
Sent: Thursday, November 12, 2020 12:23 PM
To: Donna Mignon
Subject: RE: Red Maple Place

Donna: Please invite these folks to the hearing days in this case:

Nancy Goldring: nrgoldring@gmail.com
Michele Yendall: michele.yendall@comcast.net
Philip Tyler: philiptyler446@yahoo.com
Beth Miller: bethbonemiller@gmail.com
Dan O'Leary: djoleary@esd-associates.com

Thanks.

Michael

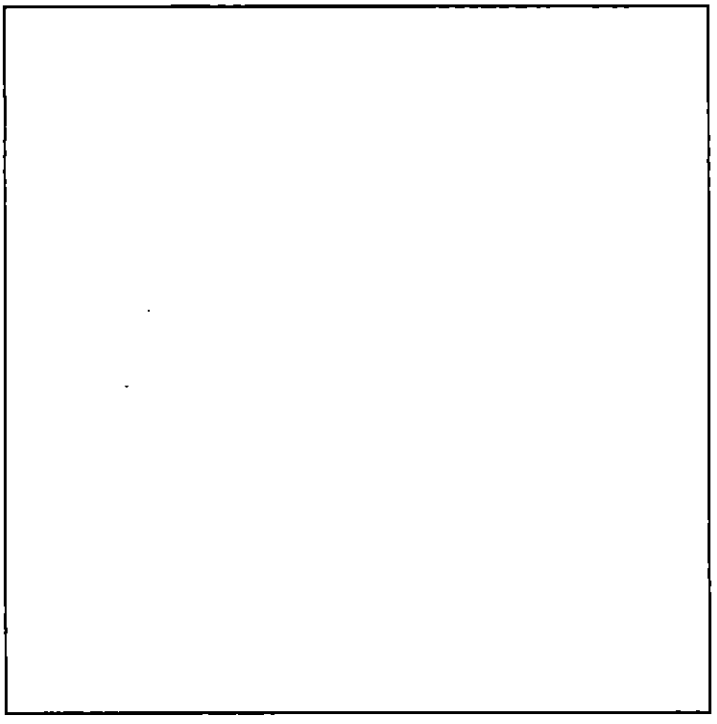
Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

From: Donna Mignon [mailto:dmignon@baltimorecountymd.gov]
Sent: Thursday, November 12, 2020 10:20 AM
To: Michael McCann <michael@mmccannlaw.net>
Subject: Red Maple Place

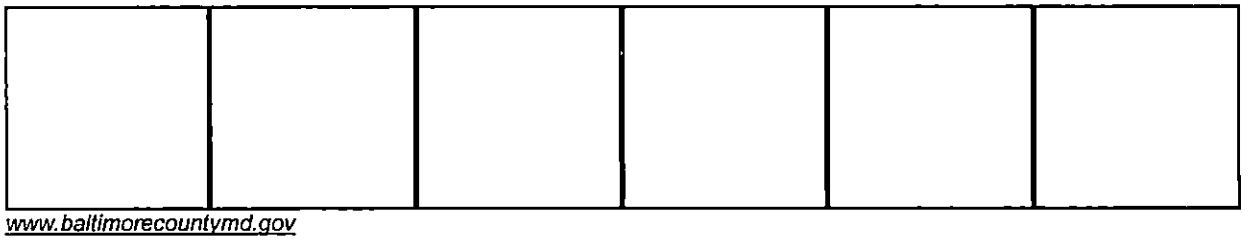
Hi Michael,
If you have anyone that needs to be invited to this hearing. Please send us names and emails so we can individually invite them.
Thank you.

Donna Mignon, Legal Assistant
Baltimore County Office of Administrative Hearings

105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868



CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

Panelist List

Name	Email address	Phone number	Time Zone	Language	Locale
Deb Wiley (Alternate Host)	dwiley@baltimorecountymd.gov	1-	New York Time	English	U.S.
Henry Akwah (Alternate Host)	hayakwah@baltimorecountymd.gov	1-	New York Time	English	U.S.
Adam Rosenblatt	amrosenblatt@venable.com	1-	New York Time	English	U.S.
Christopher Mudd	cdmudd@venable.com	1-	New York Time	English	U.S.
Dana Johnson	dana@homesforamerica.org	1-	New York Time	English	U.S.
David Thaler	dsthaler@dsthaler.com	1-	New York Time	English	U.S.
Diane Clyde	diane@homesforamerican.org	1-	New York Time	English	U.S.
Heather Wirth	heatherwirth@comcast.net	1-	New York Time	English	U.S.
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Jeff Livingston	jlivingston@baltimorecountymd.gov	1-	New York Time	English	U.S.
Jenifer Nugent	jnugent@baltimorecountymd.gov	1-	New York Time	English	U.S.
Jerry Chen	jchen@baltimorecountymd.gov	1-	New York Time	English	U.S.
Jim Mostsco	jmotsco@dshaler.com	1-	New York Time	English	U.S.
Jos Venturina	jventurina@baltimorecountymd.gov	1-	New York Time	English	U.S.
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Lloyd Moxley	lmoxley@baltimorecountymd.gov	1-	New York Time	English	U.S.
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Maureen E. Murphy	mmurphy@baltimorecountymd.gov	1-	New York Time	English	U.S.
Mickey Cornelius	mcornelius@trafficgroup.com	1-	New York Time	English	U.S.
Mike Vaszil	mvaszil@dsthaler.com	1-	New York Time	English	U.S.
PAI Conference Room	pai-cobconfrm110@baltimorecountymd.gov	1-	New York Time	English	U.S.
Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.
Ros Johnson	rvjohnson@baltimorecountymd.gov	1-	New York Time	English	U.S.
Stacy McArthur	smcarthur@dsthaler.com	1-	New York Time	English	U.S.
Stephen Ford	sford@baltimorecountymd.gov	1-	New York Time	English	U.S.
Vishnubhai Desai	vdesai@baltimorecountymd.gov	1-	New York Time	English	U.S.

OK

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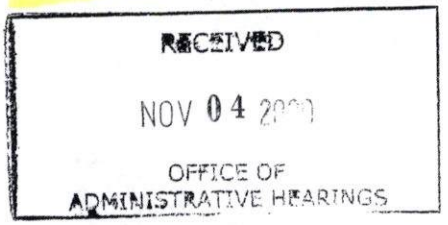
Vishnubhai Desai	vdesai@baltimorecountymd.gov	1-	New York Time	English	U.S.

OK

ZONING ADVISORY COMMITTEE AGENDA
ROOM 123, COUNTY OFFICE BUILDING
DISTRIBUTION MEETING November 2, 2020
FORMAL OR INFORMAL RESPONSE DUE AT November 9, 2020 Meeting



* Agenda Only
\+ Agenda and Petition
& Agenda and Plat
# Agenda, Petition and Plat

Distribution:

* Administrative Law Judge, Commissioner (Paul M. Mayhew); MS #4103
\# PAI, Zoning Review H.O. Hearing File (Kristen Lewis)
\# PAI, Zoning Review DRC/ZAC Meeting File (W. Carl Richards, Jr.)
* PAI, Development Management (Lloyd Moxley) MS # 1105
* PAI, Code Enforcement (Lisa Henson) MS # 1105
* PAI, Building Inspection
& PAI, Development Plans Review (Vishnu Desai)
\# Planning Office (Jenifer Nugent) MS #4101
* Recreation and Parks
\# DEPS (Jeff Livingston) – *2 copies of each MS #4400*
& State Highway Administration, Access Permits Division (Steven Autry)
& Fire Department MS #1102F (Inspector Muddiman)
* Economic Development Commission, Business Develop. MS #4300 (Stanley Jacobs)
* Highways (Tom Hargis); MS #1003
* Neighborhood Improvements MS #4201(Marcia Williams)
\# People's Counsel (Peter Zimmerman); MS #4204
* County Council, District 3; MS #2201
* Mike Ruby (Newspaper)
\+ IF CRITICAL AREA, Maryland Office of Planning (Joseph Griffiths)
\# IF FLOODPLAIN, Maryland Department of the Environment
\# IF FLOODPLAIN, Public Works (Terry Curtis); MS #1315
* IF ELDERLY HOUSING, Community Development; MS #1102M
\# IF HELICOPTER, Police Department, Aviation Unit (Officer Taylor or Sgt. Wines)
\# IF PAWN SHOP, Police Department, Burglary/Pawn Unit (Det. Kropfelder); MS #110
* IF TOWER, Tower Coordinator, c/o OIT; MS #2007

The attached information is being forwarded to you for comment. Your comments
reflect any conflicts with the codes, standards, or regulations of your office or depa
Development representatives that attend the meeting should be prepared to sub
agency's response as either "no comment", "written comment" or "more review time
within one week at the next meeting. If no written response is received within two w
assumed that your agency has "no comment". All written comments must referen
item number. All comments received will be compiled and includ
zoning/development file for review and consideration by the hearing officer duri
of the upcoming zoning/development hearing.

If your agency or section is not represented at the meeting, you should ret
comments to the Department of Permits and Development Management (P
County Office Building, 111 West Chesapeake Avenue, Towson, MD
#1105), Attention: Kristen Lewis

If you have any questions regarding a particular zoning petition, pleas
Review Planner (see initials after item number) at 410-887-3391.

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ZAC AGENDA

Case Number: 2020-0267-A
Existng Use: COMMERCIAL
Type: VARIANCE
Legal Owner: Red Maple Plaz
Contract Purchaser: No Co
Critical Area: No
Property Address: Flo
Location: So
Existi
Pr

Reviewer: Gary Hucik
Proposed Use: COMMERCIAL

act Purchaser was set.

ain: No **Historic:** No **Election Dist:** 9 **Council Dist:** 5

ST JOPPA RD
er of East Joppa Road, West side of Fairmont Ave.

DR 10.5 **Area:** 2.98 AC

more County Zoning Regulation (BCZR), if necessary, to allow a maximum building height of
xtension for the stair tower for maintenance access to the roof) in lieu of the maximum
R section 201.3.A (Council Bill No 107-20).

956-3954-A; 1960-4828-XA
one
e

Notes:

Case Number: 2020-0268-A **Reviewer:** Jason Seidelman
Existng Use: RESIDENTIAL **Proposed Use:** RESIDENTIAL
Type: ADMINISTRATIVE VARIANCE
Legal Owner: Mark & Kaitlin Baer (formerly Kaitlin Ruddell
Contract Purchaser: No Contract Purchaser was set.

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 1 **Council Dist:** 1

Property Address: 125 TAUNTON AVE
Location: South East side of Taunton Ave (40'), 211 feet South West of Devere Lane (40').

Existing Zoning: DR 1 **Area:** 10,800 SQ FT
Proposed Zoning:
ADMINISTRATIVE VARIANCE:
BCZR 1B01.2.C.1.b To permit a rear yard deck with a rear setback of 16 feet in lieu of the required 37.5 feet.
Attorney: Not Available
Prior Zoning Cases: None
Concurrent Cases: None
Violation Cases: None
Closing Date: 11/23/2020

Miscellaneous Notes:

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2 of 3

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Gregory Slater
Secretary
Tim Smith, P.E.
Administrator

November 10, 2020

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Case No. 2020-0267-A

Red Maple Place
407 E. Joppa Rd.

Should you have any questions regarding this matter, please contact Mr. Steven Autry at 410-229-23352 or toll free (in Maryland only) 1-800-735-2258 extension (x2335), or by email at (sautry@mdot.maryland.gov).

Sincerely,

Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

WW/RAZ

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

November 10, 2020

SENT VIA EMAIL
Paul M. Mayhew, Managing Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Cuba Lane LLC & York Road Associates – Legal Owner/Petitioners
Red Maple Place Limited Partnership – Contract Purchaser/Petitioners
407 East Joppa Road
Case No.: 2020-267-A
Scheduled Hearing Date, November 19, 2020

Dear Judge Mayhew,

Upon review of the November 2, 2020 Zoning Advisory Committee Agenda Distribution Meeting circular and accompanying zoning petitions, there recently came to our attention the above petition for zoning variance in Case No. 2020-0267-A. The petition is marked as a 'drop-off' petition filed on October 29, 2020. It is not initialed by any zoning staff member.

As with every zoning petition, our office filed an entry of appearance and notified Petitioners' attorneys. Ordinarily, we would place the file in the cabinet, awaiting Zoning Advisory Committee (ZAC) comments and the usual time period of at least a few months before the matter would come on for hearing. To date, our office has not received the requisite ZAC comments. We then checked with the zoning office staff, and were informed that no comments had yet been submitted.

It then came to our attention that the case is scheduled for Webex public hearing to be convened by you on November 19, 2020. There are two threshold legal problems. First, the schedule conflicts with minimum 30-day schedule interval between filing and public hearing under County Code Sec. 32-3-302(a). Second, the petition is premature and unripe because it requests a height variance, "if necessary" from Bill 107-20, which does not now exist. Bill 107-20 is pending. It may or may not pass. If passed, it may be in amended form.

It may or may not be signed by the County Executive. In sum, this petition is not justiciable. It is untimely, unripe, and disruptive of the separation of powers.

* * *

There are already practical difficulties for interested citizens to prepare for a hearing and examine records in buildings where they lack access. This is aggravated here by a violation of the law which provides a 30-day minimum time interval between the filing of a petition and the subsequent administrative hearing.

The County Code addresses schedule and notice issues for variances in Sec. 32-3-302. This legislation addresses the schedule time frame in Sec. 32-3-302(a):

> "(a) *In general.* Except as provided in Sec.32-303 of this subtitle, the Department of Permits, Approvals, and Inspections shall schedule a public hearing on a petition for variance, special hearing, or special exception for a date not less than 30 days and not more than 120 days after the petition is accepted for filing."

The Sec. 32-303 exception covers administrative special hearings and so does not apply here.

There is a procedural due process dimension to this rule. When not followed, as here, the interested public is squeezed for preparation time. Even if the minimum 20-day public notice requirements for posting the property and newspaper publication are satisfied, they are barely satisfied. This accelerated schedule also rushes the various departments which provide ZAC comments, which, as noted, are not yet available.

We cannot recall any zoning petition which moved from filing date to hearing so rapidly. Indeed, the usual time lags have tended to increase during the pandemic, due in part to the backlog from scheduling interruptions in the springtime. To gain perspective, we sampled and charted the upcoming Administrative Law Judge November hearing schedule. We found 14 zoning hearings, 9 filed in July, 2 in June, 1 in May, and 1 in March. The present case thus deviates extremely from the pattern. The chart is attached.

The Court of Appeals has underlined that procedural due process requires adherence to basic principles of fairness. Maryland Aggregates v. State 337 Md. 658, 686-87 (1995); see Calvert County Pl. Comm'n v. Howlin Realty Mgt, Inc. 364 Md. 301, 322 (2001). Whether or not the extraordinary rush to hearing here may be described as a blitzkrieg, the rush to hearing inevitably favors the petitioner and hinders public participation.

Upon review of the legislative history, we found County Council Bill 6-18, attached. This enhanced the due process requirements. The Bill amended the minimum time interval between filing and hearing from 21 to 30 days. It also included heightened notice

requirements. This recent legislative attention to the hearing process italicizes the importance of rules which function to enhance transparency to the public's opportunity to be heard.

* * *

There is another problem, which goes beyond the hurried hearing schedule. The petition, as filed, asks, in pertinent part "... to allow a maximum building height of 45.5 feet ... in lieu of the maximum height of 30 feet per BCZR Sec. 201.3.A (Council Bill No. 107-20)." But Council Bill 107-20, attached, is still pending. This Bill is currently scheduled for the November 10, 2020 work session and November 16, 2020 legislative session. It is uncertain what will happen at these sessions; whether it will pass, fail, be tabled, or otherwise; and if passed, whether amended. Even if it passes on November 16, it would have to be approved by the County Executive. It could not possibly be final until reviewed by the Executive and in accord with the applicable effective date. There then may be an evaluation of its effect on this proposed development.

Even if the jurisdictional scheduling problem did not exist, it is thus premature to file a zoning petition related to possible future legislation. Otherwise stated, it is not ripe. Presently, if we are not mistaken, BCZR Sec. 201.3 allows the proposed height of 45.5 feet.

The petition also places the Administrative Law Judge in the awkward position of ruling on the impact of legislation which is not final. A premature decision could possibly hinder or otherwise have an effect on the legislative process and the separation of powers.

It deprives interested citizens of the opportunity to review any potential enacted legislation and prepare for the hearing. It asks for agency comments on potential legislation which may not occur and, in any event, gives them little or no time to study and evaluate the potential impact.

We cannot recall any zoning petition which asks for such hypothetical relief from possible future legislation. This sets an unjustified and unwarranted precedent.

* * *

As the Court of Appeals often says, the rules are not mere rubrics. They must be followed. Over and above the illegal procedural fast-track of the hearing, the absence of an actual case or controversy is fatal. Indeed, depending on the possible scenarios, it may never be necessary for any petition to be filed.

So there is no misunderstanding, this office would oppose any amendment, continuance, stay, provisional stopgap, or other posture whereby this case remains open.

In view of the undisputable legal diagnosis, there is no need for this office to appear in person at the premature public hearing. Otherwise stated, we plan to submit on the record. If any doubt arises as to the necessity for dismissal, we are prepared to file a more detailed post-hearing memorandum on or before December 21, 2020.

Under these circumstances, we reserve judgment on the merits of any hypothetical future variance. It is unnecessary and inappropriate to address issues which may never arise. If an actual justiciable controversy does arise, we will review the situation at that time.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: SENT VIA EMAIL
Christopher D. Mudd, Esquire, Attorney for Petitioners
Jeffrey Perlow, Office of PAI, Zoning Office
Peter Gutwald, Director of Planning
James R. Benjamin, County Attorney
Michael Mallinoff, Director of PAI
Thomas Bostwick, County Council Secretary

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2020, Legislative Day No. 25

Bill No. 107-20

Mr. David Marks, Councilman

By the County Council, October 19, 2020

A BILL
ENTITLED

AN ACT concerning

Zoning Regulations – Bulk Regulations – Residence, Apartment, Elevator (R.A.E.2) Zone

FOR the purpose of providing certain height regulations for multifamily buildings in certain locations in the Residence, Apartment, Elevator (R.A.E.2) Zone; and generally relating to the R.A.E.2 Zone.

BY repealing and re-enacting, with amendments

Section 201.3.A
Baltimore County Zoning Regulations, as amended

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Zoning Regulations read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

ARTICLE 2 - ELEVATOR-APARTMENT RESIDENCE ZONES, RESIDENTIAL-OFFICE ZONES, OFFICE ZONES, BUSINESS ZONES, MANUFACTURING ZONES AND DISTRICTS

Section 201 – R.A.E.2 Zones

§ 201.3. Bulk regulations in R.A.E.2 Zones.

A. The maximum height of any point on a building shall be 1½ times the maximum height that would be permitted by application of the height regulations for B.L. Zones, EXCEPT THAT MULTIFAMILY BUILDINGS LOCATED WITHIN 500 FEET OF THE DOWNTOWN TOWSON (D.T) DISTRICT SHALL HAVE A MAXIMUM HEIGHT OF 30 FEET.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect on November 30, 2020, and shall also apply to any project that has not received full and final approval of a development plan on or before the effective date of this Act.

TENTATIVE#1

BALTIMORE COUNTY COUNCIL AGENDA
LEGISLATIVE SESSION 2020, LEGISLATIVE DAY NO. 27
NOVEMBER 16, 2020 6:00 P.M.

WORK SESSION – NOVEMBER 10, 2020 – 4 P.M.

CEB = CURRENT EXPENSE BUDGET
BY REQ. = AT REQUEST OF COUNTY EXECUTIVE

A. MOMENT OF SILENT MEDITATION
PLEDGE OF ALLEGIANCE TO THE FLAG

B. APPROVAL OF JOURNAL – Meeting of November 2, 2020

C. ENROLLMENT OF BILLS – Bills 101-20, 102-20 & 104-20

D. INTRODUCTION OF BILLS

E. CALL OF BILLS FOR FINAL READING AND VOTE
Bill 97-20 – Mrs. Bevins(By Req.) – Permits, Approvals and Inspections – Event Permits
Bill 105-20 – Mr. Jones – Zoning Regulations – Parking
Bill 106-20 – Mr. Marks – Zoning Regulations – Permitted Uses - B.L.R. Zone
Bill 107-20 – Mr. Marks – Zoning Regs.-Bulk Regulations – Residence, Apartment, Elevator (R.A.E.2) Zone

F. APPROVAL OF FISCAL MATTERS/CONTRACTS
1. BAT #21-01 – Department of Aging – Aging
2. Contract – Class Action Administration, LLC d/b/a JND Legal Administration – Claims administration services-LAW

G. MISCELLANEOUS BUSINESS
1. Correspondence - (a)(11) - Non-Competitive Awards (October 14, 2020)
2. Res. 129-20 – Mrs. Bevins(By Req.) – Approval of Extension – Sanitary Sewer System – Milford Mill Area

AGENDA
BALTIMORE COUNTY COUNCIL AGENDA
LEGISLATIVE SESSION 2020, LEGISLATIVE DAY NO. 27
NOVEMBER 16, 2020 6:00 P.M.

CEB = CURRENT EXPENSE BUDGET
BY REQ. = AT REQUEST OF COUNTY EXECUTIVE

* Addendum

Bill 107-20 **Council District(s) 5**

Mr. Marks

Zoning Regs. – Bulk Regulations – Residence, Apartment, Elevator (R.A.E.2) Zone

Bill 107-20 adds a new height restriction for multifamily buildings in certain areas in the Residence, Apartment, Elevator (R.A.E.2) Zone. Specifically, the bill sets a maximum height of 30 feet for any multifamily building in an R.A.E.2 Zone that is located within 500 feet of the Downtown Towson (D.T.) District. Bill 107-20 applies to any project that has not received full and final approval of a development plan on or before the bill's effective date.

With the affirmative vote of five members of the County Council, Bill 107-20 will take effect November 30, 2020.

ADMINSTRATIVE LAW JUDGE'S NOVEMBER ZONING HEARINGS

Hearing Date	Case No.	Petition Filing Date
November 5, 2020 & November 6, 2020	2020-073-SPHA & PAI # 03-523	3/9/2020
November 9th	2020-160-SPHX	7/13/2020
	2020-153-SPHX	7/7/2020
November 10th	2020-140-A	6/17/2020
November 12th	2020-172-A	7/20/2020
	2020-182-A	7/24/2020
November 13th	2020-178-SPHA	7/22/2020
November 16, 2020	2020-162-A	7/13/2020
	2020-176-A	7/21/2020
November 17, 2020	2020-157-A	7/10/2020
	2020-168-SPH	7/17/2020
November 19, 2020 & November 20, 2020	2020-267-A & PAI # 09-0866	10/29/2020
November 23, 2020	2020-142-X	6/19/2020
	2020-119-SPHA	5/19/2020

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2018, Legislative Day No. 3

Bill No. 6-18

Mr. Tom Quirk, Councilman

By the County Council, February 5, 2018

A BILL
ENTITLED

AN ACT concerning

Administrative Hearings – Notice

FOR the purpose amending the notice requirements for certain zoning hearings and development plan hearings; providing for the applicability of the Act; and generally relating to the notice requirements for Administrative Hearings.

BY repealing and re-enacting, with amendments

Sections 32-3-302 (a) and (b) and 32-4-227(b)
Article 32 – Planning, Zoning, and Subdivision Control
Baltimore County Code, 2015

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Laws of Baltimore County read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

ARTICLE 32 – PLANNING, ZONING, AND SUBDIVISION CONTROL

Title 3. Zoning

Subtitle 3. Variances

§ 32-3-302. Same – Hearing Required; Notice.

(a) *In general.* Except as provided in § 32-3-303 of this subtitle, the Department of Permits, Approvals and Inspections shall schedule a public hearing on a petition for a variance, [or] SPECIAL HEARING, OR special exception for a date not less than [21] 30 days and not more than [90] 120 days after the petition is accepted for filing.

(b) *Notice.*

(1) The Department of Permits, Approvals and Inspections shall ensure that notice of the time and place of the hearing relating to the property under petition be provided:

(i) By REQUIRING THE PETITIONER AT PETITIONER'S EXPENSE TO conspicuously ~~posting~~ POST TWO (2) SIGNS OF the notice on the property for a period of at least 20 days before the date of the hearing, AND TO PROVIDE A CERTIFICATE OF POSTING TO THE DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS ON THE DATE OF THE POSTING AND A SECOND CERTIFICATION OF POSTING WITHIN FIVE DAYS OF THE HEARING. THE SIGNS SHALL MEASURE AT LEAST 24 INCHES BY 36 INCHES IN SIZE AND BE PLACED WITHIN VIEW OF A PUBLIC ROAD WHERE POSSIBLE;

(ii) By REQUIRING THE PETITIONER AT PETITIONER'S EXPENSE TO PLACE a notice in at least one newspaper of general circulation IN THE COUNTY at least 20 days before the hearing; and

(iii) By THE COUNTY posting notice on the county's internet website, INCLUDING ON THE ZONING AND DEVELOPMENT HEARINGS CALENDAR AND THE COMMUNITY UPDATE NEWSLETTER WEBPAGES, AT LEAST 15 DAYS BEFORE THE HEARING.

(2) The notice shall provide:

(i) The address of the property under petition or, if not available, a description of the property; and

(ii) The action requested by the petition.

(3) THE ADMINISTRATIVE LAW JUDGE MAY NOT CONSIDER THE PETITION UNLESS NOTICE FOR THE PROPERTY UNDER PETITION HAS BEEN POSTED IN ACCORDANCE WITH THIS SECTION.

Title 4. Development

Subtitle 2. Development Review and Approval Process

§ 32-4-227. Hearing Officer's Hearing – General Requirements.

(b) *Notice.*

(1) At the direction of the county, notice of the date, time, and place of the Hearing Officer's hearing shall be conspicuously posted on the lot, parcel, or tract that is the subject of the Development Plan at least 20 working days before the hearing.

(2) The posting of the notice of the date, time, and place of the Hearing Officer's hearing shall remain posted on the lot, parcel, or tract for at least 15 days before the hearing.

(3) NOTICE OF THE DATE, TIME, AND PLACE OF THE HEARING OFFICER'S HEARING SHALL BE POSTED BY THE COUNTY ON THE COUNTY'S INTERNET

WEBSITE, INCLUDING ON THE ZONING AND DEVELOPMENT HEARINGS CALENDAR AND THE COMMUNITY UPDATE NEWSLETTER WEBPAGES, AT LEAST 15 DAYS BEFORE THE HEARING.

[(3)] (4) The Hearing Officer may not consider the Development Plan unless NOTICE FOR the property subject to the plan has been posted in accordance with this section.

SECTION 2. AND BE IT FURTHER ENACTED, that the requirements of this Act shall not apply to any Zoning Petition or Hearing Officers Hearing filed and scheduled for a hearing prior to the effective date of this Act.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect on March 19, 2018.

READ AND PASSED this 5th day of MARCH, 2018.

BY ORDER

Thomas J. Peddicord, Jr.
Secretary

PRESENTED to the County Executive for his approval this 6th day of MARCH, 2018.

Thomas J. Peddicord, Jr.
Secretary

APPROVED AND ENACTED:

March 5, 2018

Kevin B. Kamenetz
County Executive

I HEREBY CERTIFY THAT BILL NO. 6-18 IS TRUE AND CORRECT AND TOOK EFFECT ON March 19, 2018.

Julian E. Jones, Jr.
Chairman, County Council

Debra Wiley

From: Debra Wiley
Sent: Tuesday, November 10, 2020 3:16 PM
To: 'Robinson, Drew'
Cc: Donna Mignon
Subject: Red Maple Place - 09-0866

Drew,

Any way our office can get a regular sized copy of the most recent site plan for the above project.

If either you or DS Thaler can drop off to our inbox out in the lobby, that would appreciated.

Thanks in advance.

Debra Wiley

From: Debra Wiley
Sent: Tuesday, November 10, 2020 3:12 PM
To: Jerry S Chen
Cc: Donna Mignon; Paul Mayhew; Maureen E. Murphy
Subject: Red Maple Place - 09-0866

Jerry,

Please submit to our office a Summary Sheet for the above-referenced scheduled for next Thursday and Friday.

Thank you.

ZAC AGENDA

Case Number: 2020-0267-A **Reviewer:** Gary Hucik
Existng Use: COMMERCIAL **Proposed Use:** COMMERCIAL
Type: VARIANCE
Legal Owner: Red Maple Place
Contract Purchaser: No Contract Purchaser was set.

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 9 **Council Dist:** 5

Property Address: 407 EAST JOPPA RD
Location: South East corner of East Joppa Road, West side of Fairmont Ave.

Existing Zoning: RAC 2, DR 10.5 **Area:** 2.98 AC
Proposed Zoning:
VARIANCE:
Section 307.1 of the Baltimore County Zoning Regulation (BCZR), if necessary, to allow a maximum building height of 45.5 feet (with a 10 foot extension for the stair tower for maintenance access to the roof) in lieu of the maximum height of 30 feet per BCZR section 201.3.A (Council Bill No 107-20).
Attorney: Not Available
Prior Zoning Cases: 1956-3954-A; 1960-4828-XA
Concurrent Cases: None
Violation Cases: None
Closing Date:

Miscellaneous Notes:

Case Number: 2020-0268-A **Reviewer:** Jason Seidelman
Existng Use: RESIDENTIAL **Proposed Use:** RESIDENTIAL
Type: ADMINISTRATIVE VARIANCE
Legal Owner: Mark & Kaitlin Baer (formerly Kaitlin Ruddell
Contract Purchaser: No Contract Purchaser was set.

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 1 **Council Dist:** 1

Property Address: 125 TAUNTON AVE
Location: South East side of Taunton Ave (40'), 211 feet South West of Devere Lane (40').

Existing Zoning: DR 1 **Area:** 10,800 SQ FT
Proposed Zoning:
ADMINISTRATIVE VARIANCE:
BCZR 1B01.2.C.1.b To permit a rear yard deck with a rear setback of 16 feet in lieu of the required 37.5 feet.
Attorney: Not Available
Prior Zoning Cases: None
Concurrent Cases: None
Violation Cases: None
Closing Date: 11/23/2020

Miscellaneous Notes:

Donna Mignon

From: Donna Mignon
Sent: Monday, November 9, 2020 3:11 PM
To: Jerry S Chen
Cc: Debra Wiley
Subject: Development Plan Hearing Red Maple Place - & Zoning Hearing 11/19/2020 and 11/20/2020 - Maple Avenue Case No: 09-0866

Dear Jerry,
Please let me know when we can expect to have this file brought over.
Thank you so much.

Donna Mignon, Legal Assistant
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

BALTIMORE COUNTY
DEPARTMENT OF PERMITS, APPROVALS, AND INSPECTIONS

DEVELOPMENT PLAN HEARING SCHEDULE

PROJECT: RED MAPLE PLACE

DATE: 11/19/20

PROJECT LOCATION: 407 E. Joppa Road, Towson, MD. 21286

TIME: 10:00 AM

PROPOSAL: Proposed 56 apartments

PAI NUMBER: 09-0866

RECEIVED
OCT 15 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

MEETING LOCATION: ON-LINE

COUNCIL DISTRICT: 5

DEVELOPER: RED MAPLE PLACE LIMITED PARTNERSHIP

ENGINEER: D.S. THALER, 410-944-3647

MANAGER: Jerry Chen, 410-887-3321

TRACKING NO: MAJ-2019-00004

ETING: ONLINE OR TELEPHONE VIA WEBEX.
THE OFFICE OF ADMINSTRATIVE HEARING WILL PROVIDE COUNTY AGENCY REPRESENTATIVES, APPLICANTS AND OTHER REGISTERED INTERESTED PARTIES WEBEX ACCESS INFORMATION VIA EMAIL.

TENTION: UNTIL FURTHER NOTICE, DEVELOPMENT PLAN HEARINGS WILL BE HELD ONLINE. FOR MORE INFORMATION AND HOW TO JOIN THIS UPCOMING HEARING, VISIT THE OFFICE OF ADMINISTRATIVE HEARING'S VIRTUAL MEETING WEB PAGE AT:

www.baltimorecountymd.gov/hoh

Debra Wiley

From: Lloyd Moxley
Sent: Tuesday, October 13, 2020 2:16 PM
To: Janice M Kemp
Cc: Donna Mignon; Debra Wiley
Subject: New Time Proposed: Red Maple DPH

Please update to a 9 a.m. start
Thank you

[redacted] 11/19 11/20 > [redacted] Development Case

Donna Mignon

Subject:	Web seminar scheduled: Development Plan Hearing - Continuation of RED MAPLE PLACE -09-0866
Location:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=eca7bc129e2d53038ee10f6dd474a22d2
Start:	Fri 11/20/2020 10:00 AM
End:	Fri 11/20/2020 4:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	webex

When it's time, start the Webex event here.

Host: Donna Mignon (dmignon@baltimorecountymd.gov)
Event number (access code): 172 255 9064

Friday, November 20, 2020 10:00 am, Eastern Standard Time (New York, GMT-05:00)

Event address for attendees:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=eca7bc129e2d53038ee10f6dd474
Event address for panelists:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e0fe54ed4de7a16133a0106966ba

Start event

Audio conference information
+1-415-655-0001 US Toll
Global call-in numbers

Join from a video system or application

Dial 1722559064@baltimorecountymd.webex.com
You can also dial 173.243.2.68 and enter your meeting number.
Panelist numeric password: 675017

If you are a host, click here to view host information:
https://baltimorecountymd.webex.com/baltimorecountymd/j.php?MTID=e4c56dfc920f81f3c501b9f52974a5f40

Need help? Go to http://help.webex.com

Donna Mignon

Subject:	Web seminar scheduled: Development Plan Hearing - RED MAPLE PLACE - 09-0866
Location:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e2f8159a43c44f6cd0c92ba6a9d7539df
Start:	Thu 11/19/2020 10:00 AM
End:	Thu 11/19/2020 10:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	webex

When it's time, start the Webex event here.

Host: Donna Mignon (dmignon@baltimorecountymd.gov)
Event number (access code): 172 052 4317

Thursday, November 19, 2020 10:00 am, Eastern Standard Time (New York, GMT-05:00)

Event address for attendees:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e2f8159a43c44f6cd0c92ba6a9d7
Event address for panelists:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=edd17a3adc896bb51c3d05c0fdc8

Start event

Audio conference information
+1-415-655-0001 US Toll
Global call-in numbers

Join from a video system or application
Dial 1720524317@baltimorecountymd.webex.com
You can also dial 173.243.2.68 and enter your meeting number.

Panelist numeric password: 334890

If you are a host, click here to view host information:
https://baltimorecountymd.webex.com/baltimorecountymd/j.php?MTID=e482e62d80ef75fa656ad6cbc770ab924

Need help? Go to http://help.webex.com

Donna Mignon

From: Kristen L Lewis
Sent: Tuesday, September 29, 2020 1:33 PM
To: Donna Mignon
Cc: Debra Wiley
Subject: RE: RE: HOH SET: 11/19 and 11/20 - RED MAPLE PLACE - 09-0866

Hi Donna,

Yes, I have it reserved, Jerry sent out a list of dates. Thank you,

Kristen Lewis
PAI – Zoning Review
410-887-3391

From: Donna Mignon
Sent: Tuesday, September 29, 2020 1:22 PM
To: Kristen L Lewis <klewis@baltimorecountymd.gov>
Cc: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: FW: RE: HOH SET: 11/19 and 11/20 - RED MAPLE PLACE - 09-0866

Hi Kristen,
Just want to double check with you that the below dates are available for this development case? If they are available please put this in.
Thank you.

From: Jerry S Chen <jchen@baltimorecountymd.gov>
Sent: Tuesday, September 29, 2020 1:08 PM
To: Donna Mignon <dmignon@baltimorecountymd.gov>
Cc: PAI Dev MGT <paidevmgt@baltimorecountymd.gov>; Patrick Williams <pbwilliams@baltimorecountymd.gov>; Janice M Kemp <JMKemp@baltimorecountymd.gov>; Darryl D Putty <DPutty@baltimorecountymd.gov>; Shawn Frankton <sfrankton@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>; Lloyd Moxley <lmoxley@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>; Jerry S Chen <jchen@baltimorecountymd.gov>
Subject: RE: HOH SET: 11/19 and 11/20 - RED MAPLE PLACE - 09-0866

Donna,

HOH has been set for Nov 19 and Nov 20, 2020. DM will issue notices as soon as possible. Please forward Janice Kemp the url link for the webex hearing when available.

I will forward the public file 2 weeks prior to the hearing date. Any questions please reach out.

Combined Hearing:	No
Election/Council District:	9c5
Development Name:	RED MAPLE PLACE
Development Location:	PROPOSED 407 E. JOPPA RD
Date of Hearing:	11/19/20 & 11/20/20 - WEBEX ONLINE

Time of Hearing: 10 AM
Address: WEBEX ONLINE
PAI Number: 09-0866
Tracking Number: MAJ-2019-00004
Proposal: 56 APARTMENTS
Engineer & Phone Number: DS THALER – 410-944-3647
Project Manager & Phone Number: JERRY CHEN; 410-887-3321
URL for location: TBD BY ALJ OFFICE.

Developer Panelist Emails:
cdmudd@venable.com
amrosenblatt@venable.com
smcarthur@dsthaler.com
mvaszil@dsthaler.com
dsthaler@dsthaler.com
jmotsco@dsthaler.com
diane@homesforamerica.org
dana@homesforamerica.org
mcornelius@trafficgroup.com

County Panelist Emails:
sford@baltimorecountymd.gov
jnugent@baltimorecountymd.gov
vdesai@baltimorecountymd.gov
mkulchytska@baltimorecountymd.gov
JVenturina@baltimorecountymd.gov
rvjohnson@baltimorecountymd.gov
limwiko@baltimorecountymd.gov
jchen@baltimorecountymd.gov
jlivingston@baltimorecountymd.gov
jhermann@baltimorecountymd.gov

Best,

Jerry Chen, Project Manager
Development Management
111 W. Chesapeake Ave, Rm 123
Towson, MD 21204
410-887-3321
jchen@baltimorecountymd.gov

Donna Mignon

From: Jerry S Chen
Sent: Tuesday, September 29, 2020 2:18 PM
To: Donna Mignon
Cc: Marta Kulchytska; LaChelle N. Imwiko; Jerry S Chen
Subject: RE: RE: HOH SET: 11/19 and 11/20 - RED MAPLE PLACE - 09-0866

That might be helpful ☺

cdmudd@venable.com Chris Mudd
amrosenblatt@venable.com Adam Rosenblatt
smcarthur@dsthaler.com Stacy McCarther
mvaszil@dsthaler.com Mike Vaszil
dsthaler@dsthaler.com David Thaler.
jmotsco@dsthaler.com Jim Mostsco
diane@homesforamerica.org Diane Clyde
dana@homesforamerica.org Dana Johnson
mcornelius@trafficgroup.com Mickey Cornelius

sford@baltimorecountymd.gov Steve Ford
jnugent@baltimorecountymd.gov Jenifer Nugent
vdesai@baltimorecountymd.gov Vishnu Desai
mkulchytska@baltimorecountymd.gov Marta Kulchytska
JVenturina@baltimorecountymd.gov Jos Venturina
rvjohnson@baltimorecountymd.gov Ros Johnson
limwiko@baltimorecountymd.gov LaChelle Imwiko
jchen@baltimorecountymd.gov Jerry Chen
jlivingston@baltimorecountymd.gov Jeff Livingston
jhermann@baltimorecountymd.gov James Hermann

Jerry Chen, Project Manager
Development Management
111 W. Chesapeake Ave, Rm 123
Towson, MD 21204
410-887-3321
jchen@baltimorecountymd.gov

From: Donna Mignon
Sent: Tuesday, September 29, 2020 2:14 PM

To: Jerry S Chen <jchen@baltimorecountymd.gov>
Subject: RE: RE: HOH SET: 11/19 and 11/20 - RED MAPLE PLACE - 09-0866

Hi Jerry,
Sorry to bother you. I need full names (first and last names) for all the Panelists I need to invite.

Thank you so much.

From: Jerry S Chen <jchen@baltimorecountymd.gov>
Sent: Tuesday, September 29, 2020 1:08 PM
To: Donna Mignon <dmignon@baltimorecountymd.gov>
Cc: PAI Dev MGT <paidevmgt@baltimorecountymd.gov>; Patrick Williams <pbwilliams@baltimorecountymd.gov>; Janice M Kemp <JMKemp@baltimorecountymd.gov>; Darryl D Putty <DPutty@baltimorecountymd.gov>; Shawn Frankton <sfrankton@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>; Lloyd Moxley <lmoxley@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>; Jerry S Chen <jchen@baltimorecountymd.gov>
Subject: RE: HOH SET: 11/19 and 11/20 - RED MAPLE PLACE - 09-0866

Donna,

HOH has been set for Nov 19 and Nov 20, 2020. DM will issue notices as soon as possible. Please forward Janice Kemp the url link for the webex hearing when available.

I will forward the public file 2 weeks prior to the hearing date. Any questions please reach out.

Combined Hearing:	No
Election/Council District:	9c5
Development Name:	RED MAPLE PLACE
Development Location:	PROPOSED 407 E. JOPPA RD
Date of Hearing:	11/19/20 & 11/20/20 - WEBEX ONLINE
Time of Hearing:	10 AM
Address:	WEBEX ONLINE
PAI Number:	09-0866
Tracking Number:	MAJ-2019-00004
Proposal:	56 APARTMENTS
Engineer & Phone Number:	DS THALER – 410-944-3647
Project Manager & Phone Number:	JERRY CHEN; 410-887-3321
URL for location:	TBD BY ALJ OFFICE.

Developer Panelist Emails:
cdmudd@venable.com
amrosenblatt@venable.com
smcarthur@dsthaler.com
mvaszil@dsthaler.com
dsthaler@dsthaler.com
jmotsco@dsthaler.com
diane@homesforamerica.org
dana@homesforamerica.org
mcornelius@trafficgroup.com

County Panelist Emails:

sford@baltimorecountymd.gov
jnugent@baltimorecountymd.gov
vdesai@baltimorecountymd.gov
mkulchytska@baltimorecountymd.gov
JVenturina@baltimorecountymd.gov
rvjohnson@baltimorecountymd.gov
limwiko@baltimorecountymd.gov
jchen@baltimorecountymd.gov
jlivingston@baltimorecountymd.gov
jhermann@baltimorecountymd.gov

Best,

Jerry Chen, Project Manager
Development Management
111 W. Chesapeake Ave, Rm 123
Towson, MD 21204
410-887-3321
jchen@baltimorecountymd.gov

Event Information

Event:	Development Plan Hearing - RED MAPLE PLACE - 09-0866
Type:	Listed Event
Event address for attendees:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ebab0613ffb999a47500582010e63ecb5
Event address for panelists:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e7fbe678b22e6dd1b3b146b6d37457868
Date and time:	Thursday, November 19, 2020 10:00 am Eastern Standard Time (New York, GMT-05:00)
Duration:	12 hours
Description:	Development Plan Hearing RED MAPLE PLACE 09-0866
Event number:	172 052 4317
Event password:	1234
Host key:	156562
Alternate Host:	Deb Wiley,Henry Ayakwah
Panelist info:	
Panelist password:	
Panelist numeric password:	334890
Video Address:	1720524317@baltimorecountymd.webex.com You can also dial 173.243.2.68 and enter your meeting number.
Audio conference:	US Toll +1-415-655-0001 Show all global call-in numbers Access code: 172 052 4317
Maximum number of registrants:	10000
Destination address after event:	
Host image:	
Attendee list available for viewing by:	Host, presenter and panelists only
Event material:	None
Post-event survey:	No
Email configured:	Pending, Approved, Rejected

Start Ev
You can
event by
Start No

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Send Ev
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emails b
Send En

Send

Registration Information

Registration ID required:	No
Password required:	No
Password:	
Approval required:	No
Custom registration form:	No
After registration, go to URL:	

Manage Registrations | Delete Event | Edit Event

Donna Mignon

From: Jerry S Chen
Sent: Tuesday, September 29, 2020 1:08 PM
To: Donna Mignon
Cc: PAI Dev MGT; Patrick Williams; Janice M Kemp; Darryl D Putty; Shawn Frankton; Kristen L Lewis; Lloyd Moxley; Debra Wiley; Jerry S Chen
Subject: RE: HOH SET: 11/19 and 11/20 - RED MAPLE PLACE - 09-0866

Donna,

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Time of Hearing:	10 AM
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Engineer & Phone Number:	DS THALER – 410-944-3647
Project Manager & Phone Number:	JERRY CHEN; 410-887-3321
URL for location:	TBD BY ALJ OFFICE.

Developer Panelist Emails:
cdmudd@venable.com
amrosenblatt@venable.com
smcarthur@dsthaler.com
mvaszil@dsthaler.com
dsthaler@dsthaler.com
jmotsco@dsthaler.com
diane@homesforamerica.org
dana@homesforamerica.org
mcornelius@trafficgroup.com

County Panelist Emails:
sford@baltimorecountymd.gov
jnugent@baltimorecountymd.gov
vdesai@baltimorecountymd.gov
mkulchytska@baltimorecountymd.gov
JVenturina@baltimorecountymd.gov
rvjohnson@baltimorecountymd.gov
limwiko@baltimorecountymd.gov
jchen@baltimorecountymd.gov

Continuation of

jlivingston@baltimorecountymd.gov
jhermann@baltimorecountymd.gov

Best,

Jerry Chen, Project Manager
Development Management
111 W. Chesapeake Ave, Rm 123
Towson, MD 21204
410-887-3321
jchen@baltimorecountymd.gov

Panelist List

Name	Email address	Phone number	Time Zone	Language	Locale
Deb Wiley (Alternate Host)	dwiley@baltimorecountymd.gov	1-	New York Time	English	U.S.
Henry Akwah (Alternate Host)	hayakwah@baltimorecountymd.gov	1-	New York Time	English	U.S.
Adam Rosenblatt	amrosenblatt@venable.com	1-	New York Time	English	U.S.
Christopher Mudd	cdmudd@venable.com	1-	New York Time	English	U.S.
Dana Johnson	dana@homesforamerica.org	1-	New York Time	English	U.S.
David Thaler	dsthaler@dsthaler.com	1-	New York Time	English	U.S.
Diane Clyde	diane@homesforamerican.org	1-	New York Time	English	U.S.
Heather Wirth	heatherwirth@comcast.net	1-	New York Time	English	U.S.
James Hermann	jhermann@baltimorecountymd.gov	1-	New York Time	English	U.S.
Jeff Livingston	jlivingston@baltimorecountymd.gov	1-	New York Time	English	U.S.
Jenifer Nugent	jnugent@baltimorecountymd.gov	1-	New York Time	English	U.S.
Jerry Chen	jchen@baltimorecountymd.gov	1-	New York Time	English	U.S.
Jim Mostsco	jmotsco@dshaler.com	1-	New York Time	English	U.S.
Jos Venturina	jventurina@baltimorecountymd.gov	1-	New York Time	English	U.S.
Lachelle Imwiko	limwiko@baltimorecountymd.gov	1-	New York Time	English	U.S.
Marta Kulchytska	mkulchytska@baltimorecountymd.gov	1-	New York Time	English	U.S.
Mickey Cornelius	mcornelius@trafficgroup.com	1-	New York Time	English	U.S.
Mike Vaszil	mvaszil@dsthaler.com	1-	New York Time	English	U.S.
Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.
Ros Johnson	rvjohnson@baltimorecountymd.gov	1-	New York Time	English	U.S.
Stacy McArthur	smcarthur@dsthaler.com	1-	New York Time	English	U.S.
Stephen Ford	sford@baltimorecountymd.gov	1-	New York Time	English	U.S.
Vishnubhai Desai	vdesai@baltimorecountymd.gov	1-	New York Time	English	U.S.

OK

Donna Mignon

From: webmaster@baltimorecountymd.gov
Sent: Thursday, October 22, 2020 8:47 PM
To: Donna Mignon; Debra Wiley
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Heather
Last Name	Wirth
Email	heatherwirth@comcast.net
Phone	4102925835
Address	28 Allegheny Ave, Unit 1002, Unit 1002
City	Towson
State	Maryland
ZIP Code	21204
Case Number	PAI# 09-0866
Scheduled Hearing Date	11/19/2020

Panelist List

Name	Email address	Phone number	Time Zone	Language	Locale
Deb Wiley (Alternate Host)	dwiley@baltimorecountymd.gov	1-	New York Time	English	U.S.
Henry Akwah (Alternate Host)	hayakwah@baltimorecountymd.gov	1-	New York Time	English	U.S.
Adam Rosenblatt	amrosenblatt@venable.com	1-	New York Time	English	U.S.
Christopher Mudd	cdmudd@venable.com	1-	New York Time	English	U.S.
Dana Johnson	dana@homesforamerica.org	1-	New York Time	English	U.S.
David Thaler	dsthaler@dsthaler.com	1-	New York Time	English	U.S.
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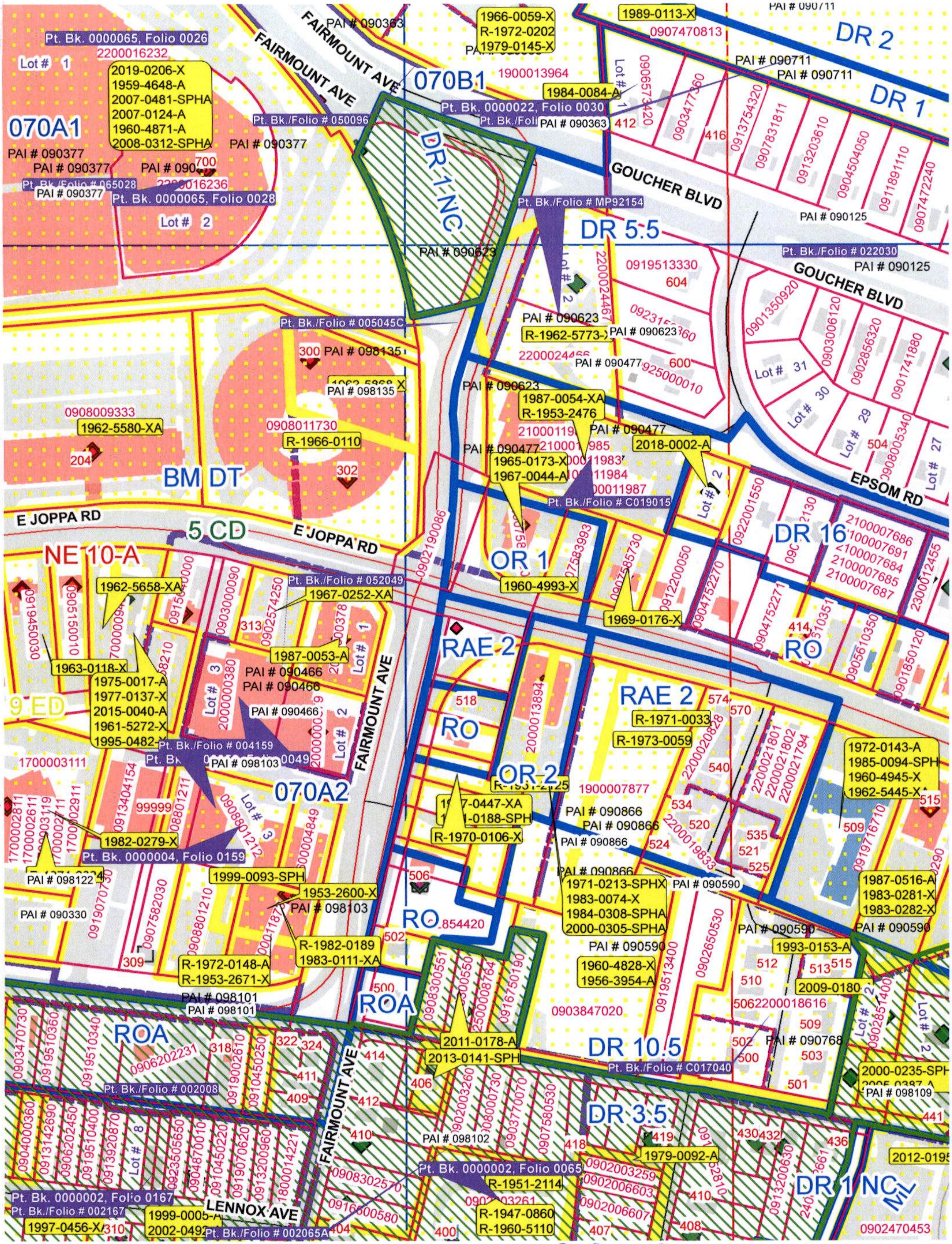
OK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DR 5.5
DR 16
DR 10.5
DR 3.5
BM DT
5 CD
NE 10-A
9 ED
OR 1
OR 2
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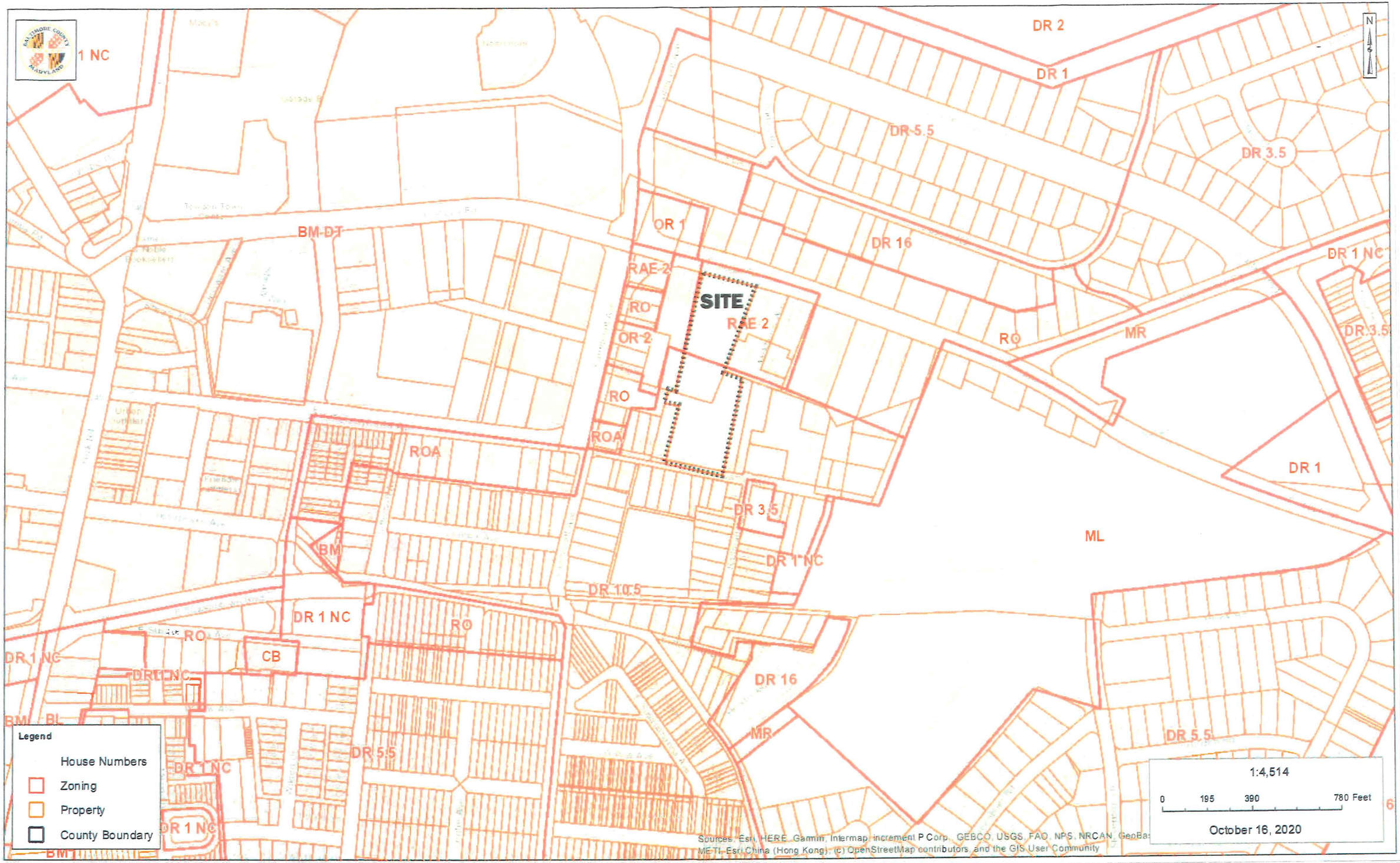
Baltimore County - My Neighborhood



2020-0267-A No revision