BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

July 14, 2009

WILLIAM J. WISEMAN III
Zoning Commissioner

Jeffrey H. Scherr, Esquire
Kramon and Graham, P.A.
One South Street, Suite 2600
Baltimore, MD 21202

RE: **DEVELOPMENT PLAN HEARING**
S/S Old Court Road (MD Route 133), N of Lightfoot Drive
(Old Court, LLC Property)
3rd Election District - 2nd Council District
Sanford M. Shapiro, et al, *Owner;* Old Court, LLC Property, *Developer*
Case No. III-421

Dear Mr. Scherr:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The development plan has been approved with conditions, in accordance with the attached Order.

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

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: David S. Thaler, P.E. & Stacey A. McArthur, D.S. Thaler & Associates, Inc., Box 47428, 7115 Ambassador Road, Baltimore, MD 21244
Brian Childres & Mariceleste Miller, D.S. Thaler & Associates, Inc., Box 47428, 7115 Ambassador Road, Baltimore, MD 21244
Wes Guckert, President, The Traffic Group, Inc., 9900 Franklin Square Drive, Suite H, Baltimore, MD 21236

IN RE: **DEVELOPMENT PLAN HEARING** S/S Old Court Road (MD Route 133) N of Lightfoot Drive **(Old Court, LLC Property)**	*	BEFORE THE ZONING COMMISSIONER OF
3rd Election District 2nd Council District	*	BALTIMORE COUNTY
Sanford M. Shapiro, et al, *Owners* Old Court, LLC, *Developer*	*	**Case No. III-421**

* * * * * * * *

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before the Hearing Officer/Zoning Commissioner for consideration of a development plan prepared by D.S. Thaler & Associates, Inc. for the proposed development of the subject property by Sanford M. Shapiro, Kathy L. Shapiro and Old Court, LLC, with 46 single-family homes, 45 of which will be new construction. The property and proposed subdivision are more particularly described on the two-page, redlined/greenlined development plan submitted into evidence and marked as Developer's Exhibit 1A and 1B. While no zoning variances are requested or needed, the Developer seeks approval of a Public Works Waiver for sidewalks along the south side of Old Court Road between the subdivision's access road and Lightfoot Drive.

This proposal has been reviewed in accordance with the development review regulations codified in Article 32 of the Baltimore County Code. Those regulations establish a process by which development is reviewed through a series of steps or stages. The first step of the process requires that the Developer submit a concept plan, which as the name suggests, is a schematic representation of the proposed development. The concept plan is submitted for review at a conference held by and between representatives of the Developer and the County at a Concept Plan Conference (CPC), which in this case was conducted on January 28, 2008. The second step of the process requires a Community Input Meeting (CIM), which is conducted during evening hours at a public facility in the vicinity of the proposed development. The CIM

provides an opportunity for residents of the locale to review and offer comment on the proposal. The CIM for this project was held on March 5, 2008 at the Summit Park Elementary School. Subsequently, a development plan is submitted for review and comment at a conference held again between the Developer and County agency representatives. Often the development plan has been revised to incorporate changes suggested at the CPC and/or CIM. The Development Plan Conference (DPC) in this case was held on April 29, 2009. The fourth a final phase of the review process requires a Hearing Officer's Hearing (HOH), which is a public hearing on the proposal before the Zoning Commissioner/Deputy Zoning Commissioner, and is conducted in accordance with the rules governing administrative hearings in this State. In this case, the Hearing Officer's Hearing was held before the undersigned Zoning Commissioner on June 26, 2009.

The Hearing Officer solicits testimony from the Developer, representatives of reviewing County agencies, and neighbors and interested individuals from the community. Issues and concerns are initially identified during the informal phase of the hearing, after which testimony on those issues is then presented in detail. The Hearing Officer is required to issue a written decision within 15 days of the closing date of proceedings. I should note that following the hearing, and with the consent of the parties, I visited the subject site to make observations considered relevant given concerns that the proposed development and requisite roadway changes would compromise the scenic character of Old Court Road. This having been completed and as required, this decision follows.

Appearing in support of this project were Kathy Shapiro on behalf of the owners and Old Court, LLC/Developer, and Jeffrey H. Scherr, Esquire, attorney for the Owners/Developer. The Developer produced as expert witnesses David S. Thaler, a Professional Engineer, Stacey A. McArthur, a Registered Landscape Architect in charge of land development for D.S. Thaler & Associates, Inc., the consultants who prepared the site plan. In addition, Brian Childres, Project Manager, and Mariceleste Miller, Chief of Storm Water Management Design both with D.S. Thaler & Associates, Inc. also appeared as well as Wes Guckert, President of The Traffic

Group, Inc., who prepared a Traffic Impact Study Report. Numerous representatives of the various Baltimore County agencies who reviewed the plan attended the hearing, including the following individuals from the Department of Permits and Development Management (DPDM): John J. Sullivan, Jr., Project Manager; Dennis A. Kennedy, P.E., Development Plans Review; William A. Miner, Land Acquisition; and Leonard Wasilewski, Zoning Review. Also appearing on behalf of the County were Jenifer Nugent, Office of Planning (OP); David V. Lykens, Department of Environmental Protection and Resource Management (DEPRM); and Bruce Gill, Department of Recreation and Parks (R&P). Finally, written development plan comments were received from Steven D. Foster, on behalf of the Maryland State Highway Administration (SHA) and Lt. Roland Bosley, Jr., Baltimore County Fire Marshal's Office. These and other agency comments are contained within the case file.

The requested approval of the proposed development plan was contested. The opponents are generally adjacent property owners, residents of the neighborhood and community leaders, namely Barbara A. (Boni) Friedman, President of Stevenson Crossing Homeowners Association, her husband Myles F. Friedman, Esquire, Jerome (Jeb) B. Brownstein along with Arnold K. Levine (also with Stevenson Crossing), Laurence H. Carton, on behalf of the Old Court/Greenspring Improvement Association, Elaine O'Mansky, Board member of Stevenson Commons Condominiums, Mical Carton, Pikesville-Greenspring Community Coalition, Seymour Rosenthal, of Stevenson Village, Ruth Goldstein, Greater Midfield Community Association, Phyllis C. Friedman, Esquire, of Helmsley Court Homeowners Association, Norman Wolfe, Sylvia M. Dolgoff, Barbara Pash, Maurice S. Bass, and Harold M. Blankman, an adjacent property owner.

The subject property under consideration is an irregularly shaped tract consisting of five (5) parcels of land located on the south side of Old Court Road, north and east of Lightfoot Drive and Lighttown Court (a private road) in Pikesville. The property contains a net area of 53.14 acres, primarily zoned D.R.2, which would permit development with up to 105 homes;[1]

[1] A minute amount of this land is also zoned D.R.1 and D.R.3.5.

however, the Developer proposes 46 single-family homes. The property is currently improved with two (2) rather large homes. The residence known as 3219 Old Court is a 5,629 square foot home built in 1999 which will remain on future designated Lot 19. The improvements at 3217 Old Court consist of a 6,973 square foot home with in-ground pool built in 1953 and centrally located on future Lots 27 and 28. This home is planned for removal prior to the redevelopment of the property. It should also be noted that the property known as 3209 Old Court Road owned by James M. and Joanne L. Smith and accessed by a private drive positioned in the northeast corner of the property was withdrawn from the development plan prior to the hearing by attorneys Richard B. Talkin and Jonathan E. Greenstein who appeared at the hearing in their capacity as guardians of the person and property of the owner Joanne L. Smith. The remaining 50.44 acres is heavily wooded to both the south and western portions of the property. As indicated above, the site is located directly off of Old Court Road, which is a State designated scenic byway route as mapped by the State Highway Administration's State Byways Program and also as a County designated scenic route. As illustrated on Exhibit 1A, the residential development will be located centrally on 27 acres of the site and buffered or surrounded on all sides by storm water management areas, the homeowners association common area, a large forest conservation easement area, and a 100-year floodplain reservation to be dedicated to Baltimore County. Access will be from Old Court Road across from Old Crossing Drive (a private road) by means of Shopo Road that will lead into the subdivision and terminate in a cul-de-sac. Interior roads to be known as Pelger Road and Lorry Lane will circulate traffic from Shopo Road to the eastern portions of the development. Each of the 46 lots will be served by public water and sewer. The area of open space is located in the middle of the property as requested by the County. Storm water management is provided at the southeast and southwestern sides of the property with emphasis on water quality and water quantity.

The proposed development has undergone significant change during the review process. For example, under the initial plan (Developer's Exhibit 4) the proposed subdivision was known as the Shapiro Property and proposed 63 new dwellings in addition to the three (3)

existing houses for a total of 66 houses. Ultimately, to meet the spirit and intent provisions of Section 260 of the Baltimore County Zoning Regulations (B.C.Z.R.), Residential Performance Standards, and the community's interest in maintaining the visual character of the corridor and keeping with the existing compatibility of the neighborhood and Master Plan, the proposal was reduced with a less dense number of homes positioned on quarter acre lots. Notwithstanding this and other changes, however, there remained a significant number of "community concerns" at the onset of the hearing. An extensive volume of testimony and evidence was offered in this case and due to the limitations of time and space, it is impossible to repeat all the testimony offered herein. The testimony and evidence offered by both sides as well as the issues raised and arguments advanced were recorded by Laurie Goodin MacKenzie, with Esquire Deposition Solutions.

STANDARD OF REVIEW

A brief comment is in order about the standard of review that the Hearing Officer must apply in this case. As noted in a prior opinion issued by this office, the development review regulations establish the "rules of the game" insofar as development in Baltimore County. The Developer may argue that these rules are too strict while the community may contend that they are not strict enough. Regardless, they are what they are. If the Developer meets the regulations, approval of the plan must follow. Moreover, if the community can show that the plan should be changed to appropriately mitigate an anticipated negative impact upon the locale, then a restriction/condition to the plan may be imposed.

Pursuant to Sections 32-4-227 and 228 of the Baltimore County Code, which regulates the conduct at the Hearing Officer's Hearing, I am first required to identify any unresolved agency comments or issues. The issues and concerns raised at the hearing are addressed as follows:

DEVELOPER'S ISSUES

Mr. Scherr, on behalf of Old Court, LLC, stated that the redlined development plan met all regulations and requirements for development in Baltimore County. Ms. McArthur

briefly reviewed the redlined changes made to Developer's Exhibit 1A and 1B and described the site as being within the area of Old Court Road and Lightfoot, Lighttown and Enclave Courts. She further stated that this was a diverse neighborhood with single-family dwellings to the east, townhouse and condominiums to the south with Stevenson Crossing and Beth Tifolah Community School across the street. *See* Aerial Photograph of surrounding area received as Developer's Exhibit 2. Additionally, she noted that the closest single-family property lot line in this development would be at least 150 feet south of Old Court Road[2] and when landscaped, the new homes would be concealed or buffered from view.

COUNTY ISSUES

The County agency representatives who were present corroborated Mr. Scherr's comments. Each of the representatives indicated that there were no outstanding or unresolved comments and recommended plan approval. I have summarized their responses below:

Office of Planning: Jenifer Nugent appeared on behalf of the Office of Planning. Ms. Nugent indicated that a School Impact Analysis was prepared by both the Developer and the Office of Planning and revealed that the projected enrollment for the elementary, middle and high schools was below the percentage of State Rated Capacity threshold of 115%, indicating compliance with the State's Adequate Public Facilities law and Section 32-6-103 of the B.C.C. A copy of the School Impact Analysis was marked and accepted into evidence as Baltimore County Exhibit 1.

As to the relevant performance standards, Ms. Nugent indicated that her office reviewed the Impact Display for Scenic Road Corridor and found that the Development meets the guidelines found in Division VI, Section A of the Comprehensive Manual of Development Policies (CMDP). *See* Developer's Exhibit 9. She further indicated that the Office of Planning had reviewed the plan and revised Pattern Book with redline modifications for compliance with the Baltimore County Zoning Regulations (B.C.Z.R.) Section 260 "Residential Performance Standards". Ms. Nugent indicated it was her understanding that the Pattern Book, marked as

[2] Other developments in the vicinity have dwelling units located as close as 60 feet from Old Court Road.

Baltimore County Exhibit 2, would be accepted with conditional approval that the Developer would work with the Office of Planning and provide appropriate submittals of front and side "architectural elements" detailing the elevation treatments for review and approval prior to the issuance of permits. The Developer agreed to be so bound by adding a redline note to Exhibit 2. Based on the above, Ms. Nugent indicated her office recommends approval of the redlined Development Plan.

Department of Recreation and Parks: Bruce Gill of this Department confirmed that his department had reviewed both pages of the development plan, introduced as Exhibits 1A and 1B, for the subject project and determined that there were no outstanding issues. No waivers of the open space requirements were required.

Office of Zoning Review: Len Wasilewski appeared as the representative of the Zoning Review Office and indicated that his office had no outstanding issues with the redlined development plan and recommended approval of the plan.

Bureau of Plans Review: Dennis Kennedy appeared on behalf of the Bureau of Plans Review, which reviews plans for the Department of Public Works. As Mr. Kennedy confirmed, he had reviewed the redlined development plan and determined that the plan met all of his agency's requirements. Therefore, the Bureau of Plans Review recommended approval.

Bureau of Land Acquisition: William A. Miner, on behalf of the Bureau of Land Acquisition, appeared and testified that, other than a few minor housekeeping matters, the redlined development plan addressed all outstanding issues and his agency recommended approval.

Department of Environmental Protection and Resource Management (DEPRM): On behalf of DEPRM, Mr. Lykens confirmed that the complex review portions of the development plan that pertain to environmental constraints, floodplains, storm water management and ground water management had been completed and that his department recommended approval. Mr. Lykens did indicate that the Hearing Officer should comment on a

downstream erosion control device designed to reduce water surface runoff. This will be addressed in the final design (Phase II) by the Developer's incorporating a velocity dissipation device below the storm water management pond outfall near Old Court Road. My approval will provide a condition addressing this storm water management recommendation.

Maryland State Highway Administration: Old Court Road (MD Route 133) is a State road. All improvements, intersections, entrances, drainage requirements and construction affecting a State road right-of-way are subject to the standards, specifications and approval of the *Maryland State Highway Administration.* Steven Foster, the SHA Chief of Engineering for Access Permits, issued a Development Plan Conference comment on June 15, 2009 indicating approval of the subdivision's access road (Shopo Road) with attendant 250-foot eastbound deceleration/acceleration tapered lanes with a center left turn lane (*See* Developer' Exhibit 6).

There was, as will be discussed below, a significant amount of testimony and evidence offered by both sides relating to traffic issues. Most residents of the area would like to see the project scaled back. They believe that Developer's traffic study (Developer's Exhibits 5 and 7-A through E) to be vague and provide unrealistic data. The need for accel and decel lanes on this primarily two-lane urban arterial road was discussed months before the hearing and final decisions regarding the requirement of the installation of these traffic devices is firmly within the jurisdiction and control of the State.

WAIVERS

In addition to development plan approval, Developer requested a waiver pursuant to B.C.C. Section 32-4-107(a), which permits the Hearing Officer, upon request from a department director, to grant a waiver of any or all requirements of Subtitles 3, 4, and 5 of Title 32 of the Baltimore County Code. Developer requested a waiver from the Bureau of

Development Plans Review Policy Manual to exempt the need to provide sidewalks along Old Court Road from the Shopo entrance Road to the southwest property line. This request was supported by Harold Blankman, the owner of an historic home, and Ruth Goldstein. They indicated there are no sidewalks in this vicinity on the southern side of Old Court Road, to which a required sidewalk would provide an essential connection. Sidewalks already exist along the opposite side (north side) of Old Court Road in this area and provide adequate pedestrian access to the schools and residential uses. In addition, they indicate that installation of sidewalks in this area of Old Court Road would require the removal of many old trees and would impact the rural and scenic character of Old Court Road. Mr. Kennedy indicated that the Director of Public Works, Edward C. Adams, Jr., visited the development site and recommended approval of this waiver. As to the requirement for sidewalks on the remaining portion of Old Court Road extending north of Shopo Road to the northeastern property line (not encompassed in Developer's waiver request), the residents objected to these improvements as well for the reasons previously stated. Unfortunately, there are no sidewalks on the other side of Old Court Road in this area and the Director of Public Works would not support a waiver of sidewalks for the "eastern leg" of the development. This area will have to be brought up to standards for safety considerations. As explained by Stacey McArthur, these improvements could be beneficial to the development but pointed out that to keep the natural and rural character of the area to the extent possible, she would reposition the sidewalk well off of Old Court Road to meander around trees and mature vegetation and add landscaping between the walkway and Old Court Road. A greenlined change was made to Exhibit 1A to reflect the approximate location of the walkway within the developments private easement area.

Based on the evidence and testimony presented in support of the waiver, I find sufficient justification as described above for the request and, pursuant to B.C.C. Section 32-4-107(a), the waiver is hereby granted.

PROTESTANTS' ISSUES

Regarding the development plan, most of the issues raised by the attending community members revolved around the idea that the proposal is too intense and does not preserve the integrity of the site given its location on a scenic route. Many believe 45 new homes are not consistent with either the Baltimore County Master Plan that promotes high quality and compatibility with the surrounding area or the development policies contained in B.C.C. Sections 32-4-102(b) and 32-4-103(a). Additionally, the utilization of an accel/decel lane that requires 500 feet of road widening – to five lanes – in close proximity to the open space parcel of land owned by Willard Hackerman that has been placed in an environmental trust is inappropriate. Public safety issues concerning perceived increases in traffic and pedestrian safety risks will further compound traffic congestion on Old Court during morning and evening rush hours. Ms. Goldstein, Boni Friedman and Larry Carton presented cumulative concerns that other developments in the area are usually on one-acre lots or larger and feature *houses of exceptional size.* Mr. Carton presented Protestants' Exhibit 1 evidencing the single-family dwellings in the Enclave, Hemsley and Eden Roc developments, all built with one house per acre or larger. Seymour Rosenthal, Elaine O'Mansky and Jeb Brownstein stated their concerns about the safety of the proposed entrance location and inadequate site distance for eastbound vehicles on the south side of Old Court Road. *See* Stevenson Crossing Homeowner's Association Exhibit marked as Protestants' 2. Further, an inadequate landscape plan makes it impossible to determine if the scenic route view is being adequately protected.

On these issues, Developer presented Wes Guckert from The Traffic Group, Inc., who reviewed the existing traffic conditions in the area and analyzed this information in light of the anticipated development; David Thaler, P.E., who prepared several development plans in this immediate area, and Stacey McArthur, the landscape architect for this project.

First, with respect to traffic, Mr. Guckert testified and presented a traffic report, dated May 27, 2009, as Developer's Exhibit 5. The traffic report studied intersection-turning movements at peak hours from 7:00 AM to 9:00 AM and from 4:00 PM to 6:00 PM at six (6) locations in the immediate vicinity of the property. It also projects traffic to reflect regional growth in 2014, the date of potential subdivision implementation. Based on this study, Mr. Guckert testified that the intersections presently operate in satisfactory conditions in both morning and evening peak periods and will continue to do so when and if the proposed subdivision is built out. Mr. Guckert also testified that, as shown in his report at Appendix A, Page 6, traffic growth has decreased on an annual basis, so that the average decrease is just over 4% annually.[3] However, to account for regional traffic growth the existing volumes were adjusted to reflect a 2% growth rate per year for a five-year period. Traffic along MD 133 has changed from 10,525 ADT (average daily trips) in 1998 to 6,812 ADT in 2007. Mr. Guckert also testified that the road improvements, left hand turn lane(s) and acceleration/deceleration lanes shown on Developer's Exhibit 1A to be constructed when the subdivision is built out, will improve traffic flow and make safer than it is now the entrance to the Stevenson Crossing subdivision across the street from the subject property, as well as traffic traveling along the stretch of road where the subject property is located. Finally, Mr. Guckert testified that based on SHA statistics, accidents along the pertinent stretch of Old Court Road over the past several years have been minimal. *See* Developer's Exhibit 7 – Crash/Accident Frequency.

[3] This was the most divisive issue. Community leaders mistrust Mr. Guckert's testimony and Traffic Impact Analysis pointing out that it fails to take into consideration (1) the newly approved Quarry Lake at Greenspring Development, (2) the omission of turning movement counts from Lightfoot Drive, and (3) Beth Tifolah's having moved its lower school to Glyndon which will now be returning along with its attendant traffic.

With respect to Old Court Road being a scenic route and the impact of the proposed subdivision, Ms. McArthur testified that the homes to be constructed will not be sited on lots that are visible from Old Court Road, but will be placed behind forested and open space areas that are adjacent to Old Court Road, so that the homes will be buffered and not affect scenic views from Old Court Road.

Mr. Thaler also presented testimony about scenic route issues. His testimony followed the scenic view provisions of the CMDP, which was introduced as Developer's Exhibit 9. Mr. Thaler testified that the development plan will minimize tree and vegetation removal, maintain a buffer area between the road and the new development, site buildings behind natural screening and use vegetative buffers to screen the development from Old Court Road.

Closely related to the issue of compatibility discussed above is Protestants' assertion that the project proposes too many homes or, put another way, is too dense. As indicated on the redlined plan, the Old Court Property is zoned D.R.2 and would permit a maximum of 105 homes. A total of 46 homes are proposed. During argument made before me and exhibits received, Protestants asked that I consider reducing the number of lots in this development, referencing the Hearing Officer's ability to impose conditions on a development plan approval under B.C.C. Section 32-4-229(d)(2). Developer, on the other hand, argued that the Hearing Officer does not have the authority to require an across-the-board reduction of density on a D.R. 2 zoned project.

B.C.C. Section 32-4-229(d) provides:

> (2) In approving a Development Plan, the Hearing Officer may impose any conditions if a condition:
>
> (i) Protects the surrounding and neighboring properties;
>
> (ii) Is based upon a comment that was raised or a condition that was proposed or requested by a participant;

(iii) Is necessary to alleviate an adverse impact on the health, safety, or welfare of the community that would be present without the condition; and

(iv) Does not reduce by more than 20%:

1. The number of dwelling units proposed by a residential Development Plan in a D.R.5.5, D.R.10.5, or D.R.16 zone; or

2. The square footage proposed by a non-residential Development Plan.

The extent of the Hearing Officer's conditional authority under this Section has been raised before, particularly in the Warfield Property (Case No. IV-625), Qureshi Property (Case No. I-523), and Jessop Property (Case No. VIII-842) matters wherein I determined that, other than in the D.R.5.5, D.R.10.5, and D.R.16 zones, the County Council has not given the Hearing Officer authority to order a blanket reduction in the amount of residential density allowed for a project. After having considered the issue on appeal, the County Board of Appeals and Circuit Court of Baltimore County have affirmed this interpretation.

As in Warfield, Qureshi, and Jessop, I find that the language of Section 32-4-229(d) is plain and unambiguous and provides the Hearing Officer, as part of his review and approval of residential development plans, the ability to reduce the overall density of a plan in certain higher density residential zones, such as D.R.5.5, D.R.10.5, and D.R.16, and only up to 20% if the Hearing Officer determines that such a condition is necessary to alleviate proven adverse impacts on the health, safety, or welfare of the community and to protect the surrounding and neighboring properties. *See* B.C.C. Section 32-4-229(d). The authority to unilaterally reduce residential density, however, does not exist in the D.R.2 zone.

At any rate, even if I did have the authority to reduce the density of this project, I would not exercise this authority because there is no justification for me to do so in this case. No evidence or testimony has convinced me that the development of this property at a density of 46 units, 59 units less than what its zoning would permit, would result in an adverse impact on the health, safety, or welfare of the surrounding community that would necessitate a reduction in the number of homes.

CONCLUSION

While I am appreciative of the fact that the neighbors who actually reside in the area are no doubt familiar with the existing conditions on their own properties and the traffic congestion they encounter in the area, I am not persuaded by the conclusions that they draw with regard to the proposed development. As set forth earlier under *Standard of Review*, the Baltimore County Code clearly provides that the "Hearing Officer shall grant approval of a development plan that complies with these Development Regulations and applicable policies, rules, and regulations." B.C.C. Section 32-4-229. Therefore, if the County agencies identify no specific deficiency or issue before the Hearing Officer, the development plan is presumed to be in compliance with the Development Regulations, and the burden is then on a Protestant to rebut that presumption. *See generally People's Counsel for Baltimore County v. Elm Street Development, Inc.*, 172 Md. App. 690 (2007); *Mossburg v. Montgomery County*, 107 Md. App. 1 (1995); *see also* B.C.C. Section 32-4-227(e)(2).

With the testimony of Ms. McArthur and Messrs. Guckert and Thaler and the concurrence of the different County and State agencies, the Developer satisfied its burden of proof with regard to approval of the development plan and, therefore, is entitled to approval of the plan unless someone was able to point to a specific failure of the development plan to

comply with the applicable regulations. As discussed above, while certain individual property owners and community representatives (Protestants) expressed generalized complaints and concerns over the proposed development, they failed to point to specific deficiencies that would prevent plan approval.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Article 32, Title 4 of the Baltimore County Code, the development plan and requested waiver to provide sidewalks along the south side of Old Court Road from Shopo Road to the southwest property line shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 14th day of July 2009 that the two paged, redlined/greenlined development plan for the **Old Court, LLC Property**, identified herein as Developer's Exhibit 1A-1B, be and is hereby APPROVED, subject to the following conditions:

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

2) Prior to the issuance of any building permits, the Developer shall submit building elevation drawings/revised Pattern Book of the proposed dwellings to the Office of Planning for review and approval.

3) A Final Landscape Plan in accordance with the site plan shall be submitted to the Office of Planning and Avery Harden, the Baltimore County Landscape Architect, for approval. A copy of this landscape plan is also to be provided to the Old Court/Greenspring Improvement Association. Most notably, the final approved landscape plan must show year round evergreen screening between the subject property and the south side of Old Court Road and those lots identified on the site plan as 1 through 4 and 42 through 46. The main focus of the landscape

plan shall be to provide appropriate landscaping for a scenic route along the south side of Old Court Road.

4) The Developer and the Department of Public Works shall work together cooperatively concerning the sidewalk location currently depicted on Developer's Exhibit 1A by greenline delineation and labeled "approximate location of walk within County easement".

5) Prior to the approval of a Final Development Plan (FDP), the Developer shall address DEPRM's Storm Water Management Division comments, dated June 26, 2009 (County Exhibit 3) regarding a velocity dissipation device being incorporated below the outfall near Old Court Road to decrease velocity and disperse the flow.

Any appeal of this decision must be taken in accordance with Section 32-4-281 of the Baltimore County Code.

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

WJW:dlw

Barbara A. (Boni) Friedman, President, and Myles F. Friedman, Esquire, Stevenson Crossing Homeowners Association, 504 Old Crossing Drive, Baltimore, MD 21208
Arnold K. Levine, Stevenson Crossing Homeowners Association, 109 Old Crossing Drive, Baltimore, MD 21208
Laurence H. Carton, Old Court/Greenspring Improvement Association, and Mical Carton, Pikesville-Greenspring Community Coalition, 3004 Old Court Road, Baltimore, MD 21208
Harold M. Blankman, 3329 Old Court Road, Baltimore, MD 21208
Elaine O'Mansky, Stevenson Commons Condominiums Board Member, 8002 Brynmor Court, Unit 306, Baltimore, MD 21208
Seymour Rosenthal, Stevenson Village, 21 Stonehenge Circle, Baltimore, MD 21208
Norman Wolfe, 16 Stonehenge Circle, #5, Baltimore, MD 21208
Sylvia M. Dolgoff, 508 Old Crossing Drive, Baltimore, MD 21208
Barbara Pash, 1040 Park Avenue, Baltimore, MD 21201
Richard Talkin and Jonathan E. Greenstein, 5100 Dorsey Hall Drive, Ellicott City, MD 21042
Maurice S. Bass, 206 Old Crossing Drive, Baltimore, MD 21208
Ruth Goldstein, Greater Midfield Community Association, 3226 Midfield Road, Baltimore, MD 21208
Jerome (Jeb) B. Brownstein, Stevenson Crossing Homeowners Association, 101 Old Crossing Drive, Baltimore, MD 21208
Phyllis C. Friedman, Esquire, 409 Washington Avenue, Suite 900, Towson, MD 21204
John J. Sullivan, Jr., DPDM; DEPRM; DPR; LA; OP; R&P; Zoning Review, DPDM
People's Counsel; Case File