
GALLOWAY CREEK PUD

INITIAL STRATEGY ANALYSIS RESULTS

Prepared By Richard D. Klein
COMMUNITY & ENVIRONMENTAL DEFENSE SERVICES
811 Crystal Palace Court
Owings Mills, Maryland 21117
410-654-3021
800-773-4571
Fax: 410-654-3028
E-mail: info@ceds.org
Web Page: www.ceds.org

At The Request Of

BOWLEYS QUARTERS COMMUNITY ASSOCIATION

JANUARY 12, 2008
UPDATED FEBRUARY 20, 2008

CONTENTS

INTRODUCTION.....	1
THE IDEAL ISSUE.....	1
OPPORTUNITIES TO WIN THE GALLOWAY CREEK PUD CASE.	1
Councilman Bartenfelder.....	1
Staff.	2
Community Input Meeting.....	2
Redline Concept Plan.....	2
Office of Planning Report.	3
Planning Board Hearing.....	3
Planning Director Letter.	3
Hearing Officer Order.	3
Development Plan Conference.	4
ISSUES IDENTIFIED THUS FAR.....	4
AIRPORT NOISE ZONE.	4
ENVIRONMENT.	4
Boat Facilities.	5
Buffer Management Area Variation.	6
Impervious Surfaces.....	6
15% Impervious Area Cap.....	6
Redevelopment & Stormwater Management.....	7
Watershed Imperviousness.	8
Sea-Level Rise.....	8
Shoreline Erosion.....	8
Submerged Aquatic Grasses.	9
Sensitive Species Project Review Area.....	9
SCHOOLS.....	9
TRAFFIC.....	11
Bike Route.	11
Single Means of Access.....	11
Road-Width & ADT Limit.....	12
ZONING.	13
Compatibility.....	13
Residential Density Conflict.	13
Spot Zoning.	14
Rezoning Issue Hearing: The Association’s Second Opportunity For Victory.....	14
BALTIMORE COUNTY PLANNED UNIT DEVELOPMENT REGULATIONS.	16

INTRODUCTION

This document presents the results of an initial analysis of strategy options whereby the Bowleys Quarters Community Association can resolve community concerns regarding the Galloway Creek Planned Unit Development (PUD) proposal.

THE IDEAL ISSUE

The ideal issue has the following characteristics:

1. It affects a large number of area residents;
2. The affect on area residents threatens something they value highly;
3. County law requires that the issue be addressed through the PUD process;
4. County law also requires the Planning Board to consider the issue;
5. The County has established precedent of either denying approval or severely constraining similar projects where the issue was at play; and
6. The applicant cannot resolve the issue without reducing the PUD to something the Association can live with.

The more successful we are in identifying issues that meet all six criteria, the greater our chances of reducing the impact of the Galloway Creek PUD.

OPPORTUNITIES TO WIN THE GALLOWAY CREEK PUD CASE

Following is a summary of the events in the PUD review process and how each may create an opportunity for the Association to resolve community concerns regarding the Galloway Creek PUD. The timing of events noted below is based upon a review of the most recent PUDs.

Councilman Bartenfelder

I understand that Councilman Bartenfelder has indicated his willingness to resolve the Association's concerns regarding the Galloway Creek PUD. I suggest testing the Councilman's sincerity by asking him to take action to address your concerns. There is a remote possibility that you may succeed in making the project sufficiently hot that he may be willing to take action that is short of actually killing the project, but has the same end result. One example of such an action would be to ask the Councilman to amend Resolution 82-07. Of course, this was the resolution which allowed the Galloway Creek project to proceed through the PUD process.

The Resolution could be amended to place it under the provisions of Council Bill 55-07, which would make the limits set forth in the resolution mandatory. This would reduce the likelihood that the applicant could change the plan after the Planning Board hearing and the issuance of the Hearing Officer's order. Following are examples of the types of limits that might be contained in the amended, compulsory resolution:

- a 100-foot buffer must be maintained vs. the 25-foot buffer shown on the Concept Plan (eliminates 10% of condo building);
- all impervious surfaces must drain to bioretention facilities or other highly-effective runoff pollution control measures;
- the condo building can be no higher than 35-foot limit imposed upon single-family detached homes in the area (the building is proposed to be 69 feet high); and
- there can be only one living level, not the three proposed.

If the Councilman indicates a willingness to amend the resolution as suggested above, then the Association should consider pressing for more conditions.

Staff

As soon as an issue is ripe we should begin educating staff. Our goal must be to learn whether staff agrees that the issue is valid. If staff disagrees for good reason then we need to determine whether additional research might strengthen the issue. If staff does agree an issue is solid then we must lobby them and their superiors to recommend plan modifications or denial until the applicant resolves the issue.

Community Input Meeting

The CIM usually occurs a month after the Concept Plan Conference (CPC). Of course, the Galloway Creek CPC was held on Monday, December 31, 2007. Our goal for the CIM should be to demonstrate widespread community opposition to the PUD and that there are good reasons for this opposition. We should not reveal any of our most critical issues. Instead we should present a few issues justifying community opposition. It would also be helpful to point out one or more glaring deficiencies in the applicant's submittals, such as the failure to address the overcrowding at Kenwood High School, which is described later in this document. But the most critical thing we need to accomplish at the CIM is to show that Galloway Creek PUD is the hottest issue in the Bowleys Quarters area and the vast majority of citizens are on your side; not that of project supporters.

February 20, 2008 Update: The CIM was held February 13th. Approximately 300 people attended; 75% of which supported the Association's position.

Redline Concept Plan

Two months following the CIM the applicant will submit another version of the Concept Plan with changes noted in red. The purpose of this redline plan is to address issues raised at the CIM and by staff. We should contact Department of Permits & Development Management (PDM) staff weekly so that we will learn as soon as possible when the redline plan is received. We should then review the redline plan, along with any other new documents, to determine if any of the Association's issues have been resolved and to search for new ones.

Office of Planning Report

Within two weeks of redline plan submission the Office of Planning will generate a report to the Planning Board containing their recommendations. Our goal must be to convince planning director Pat Keller to draft a report supporting our position. However, we still need to obtain the report ASAP and adjust our presentations before the Planning Board to compensate for any weaknesses in the staff position.

Planning Board Hearing

About two weeks following the release of Mr. Keller's report the Planning Board will hold their hearing. While citizens are generally limited to two-minutes each we can probably get more time for a single Association spokesperson, expert witness(s), and an attorney if you decide to have one present. But at this point it doesn't appear an attorney will be needed at the hearing.

The Planning Board will be loathe to deny approval and is far more likely to condition approval with measures resolving community concerns. I suggest that our testimony demonstrate the following points:

- A. The project will cause impacts which are excessive by any reasonable measure;
- B. Because of these impacts the project clearly fails to comply with specific regulations the Planning Board is obligated to consider;
- C. We aggressively searched for ways to resolve each impact through modifications causing the least reduction in the number of units and other proposed uses; and
- D. Our proposed conditions constitute options that reliably resolve each issue but with the least impact to the project. This does not mean that calling for plan denial should be off the board. But to have a shot at this we must show we exhausted all less drastic options.

I assume we'll be asking the Planning Board to either reduce the number of units to eight or ten or deny approval for the project. If this is the case then the Planning Board will be more inclined to do so if we do a good job with the points above.

Planning Director Letter

Within a week of the Planning Board hearing, the planning director will issue a letter documenting the Board decision. This letter will be forwarded to the Hearing Officer and will serve as a principle basis for his determination as to whether the redline Concept Plan complies with the Planning Board recommendations and other applicable requirements. We must obtain a copy of this letter as soon as it is released to ensure that it accurately reflects our successes in convincing the Board to support our recommendations.

Hearing Officer Order

About three weeks following the hearing the Hearing Officer will issue an order approving, approving with conditions, or denying approval of the Concept Plan. There will not be another

hearing. Instead, the Hearing Officer will base their decision on the record established at the Planning Board hearing and the director's letter. We have the right to appeal this order. But the likelihood of winning on appeal will be low, particularly if the County can show there was more than a scintilla of evidence to support their decision to approve the PUD. This is why it is so critically important that we convince first staff, then the Planning Board to support our position.

Development Plan Conference

Within twelve months following Concept Plan approval by the Hearing Officer, the applicant must submit a development plan to the Department of Permits & Development Management (PDM). PDM will hold a Development Plan Conference (DPC), which will be similar to the December 31st CPC. At the DPC various agency representatives will comment on whether the development plan materially conforms to the Concept Plan.¹ If it does, then the development plan is approved. We have the right to appeal this decision as well.

ISSUES IDENTIFIED THUS FAR

Following is a listing of all of the issues identified thus far. The goal of this exercise was to get all possible issues on the table; even those with little likelihood of accomplishing the Association's goals. This expansive approach is critical to identifying **THE** best issues. Further research will show that a number of these issues offer little opportunity to resolve the Association's concerns. So an issue which presently appears to be a non-starter may look better in a few weeks.

AIRPORT NOISE ZONE

As we learned at the CPC, the site is located in the noise zone for Martin State Airport. Therefore, the project is subject to the Airport Zoning Permit Review Process administered by the Maryland Aviation Administration. The guidance document for this process can be viewed by clicking the following link: <http://www.ceds.org/Galloway/MAA-AirportZoningPermit.pdf> I have not reviewed this issue yet, but we could if the Association so desires.

February 20, 2008 Update: Further research into this issue was postponed pending the availability of additional financial resources.

ENVIRONMENT

As will be demonstrated below, Galloway Creek is a pretty special place. Though it is not pristine it still supports a number of sensitive species. As will also be shown, the applicant has opted not to pursue several very important opportunities preserve and enhance the quality of Galloway Creek. In fact, the applicant's principle submittal - Planned Unit Development Application - is completely silent on the current quality of Galloway Creek. The Existing Environmental Conditions portion of this document notes that Galloway Creek is protected as Shellfish Harvesting Waters but says nothing about how the project will impact this attribute much less the sensitive species potentially present in the creek. I suggest that we hammer away

¹ *Materially* conforms is a poorly defined phrase. The closest thing to a definition appears in PDM - POLICY NO. I.a, of the [Development Management Policy Manual](#).

at this point during the Planning Board hearing. I believe that it may gain us the support of a few additional Board members, particularly when presented in the context of all the recent news regarding the failure of the business-as-usual approach in halting the decline of the Chesapeake Bay. The following should be viewed as some of what could be many possible environmental issues.

Boat Facilities

Site proposal Note K on Sheet 2 of 5 of the Concept Plan states that the existing 188 slips will be reduced to 36. From a recent aerial photo it doesn't look like there's 188 existing wet slips. Has anyone done a recent count of the slips?

I believe that Baltimore County regulation § 33-2-604(c)(2)(iv) only allows a maximum of 15 slips, not the 36 proposed. This regulation reads:

- (iv) *The number of slips and piers is the lesser of:*
 - 1. *A. One for each 50 feet of shoreline in the subdivision in an intensely developed area or a limited development area; and*
 - B. One for each 300 feet of shoreline in the subdivision in a resource conservation area; or*
 - 2. *For a subdivision with:*
 - A. Up to 15 platted lots or dwellings, one for each lot;*
 - B. 16 to 40 platted lots or dwellings, the greater of 15 or a number equal to 75% of the platted lots or dwellings;*

There is a direct relationship between slips and boats and the quality of a waterway such as Galloway Creek. If the applicant is, in fact, asking for twice the number of slips allowed by law then this negates the dramatic reduction in the existing number of slips.

I need to verify the interpretation of the regulation through a conversation with the person handling the review of this issue for the Baltimore County Department of Environmental Protection & Resource Management (DEPRM).

The applicant must submit a Water Dependent Facilities Plan to obtain approval for the proposed piers. As of January 10th this plan was not present in DEPRM's project file. I will continue checking weekly to learn if this submission has been made.

February 20, 2008 Update: In comments dated January 25, 2008, Julia Roberts, of the Maryland Critical Areas Commission, asked DEPRM to determine if the applicant intends to continue operating a commercial marina at the site. I presume Ms. Roberts also noted that more slips

were proposed then allowed just for the condos and sought to determine if the excess slips were part of the marina.

Buffer Management Area Variation

Baltimore County Regulation §33-2-401 requires a 100- to 300-foot buffer from the high tide line. Note H on Sheet 2 of 5 of the Concept Plan states that the applicant will be seeking a variation to the buffer requirement. Item #5, on page 3, of the DEPRM Concept Plan Comments states that the applicant must submit an alternatives analysis demonstrating that no practical alternative exists to the buffer intrusion. The intrusion into the 100-foot buffer could certainly be reduced by shortening the proposed building by about a third. This would also do much to reduce the impact of the project to Galloway Creek.

As of January 10th the alternatives analysis was not present in DEPRM's project file. I will continue checking weekly to learn if this submission has been made.

From a review of recent PUD decisions it appears that the Planning Board must approve the variation. I will confirm this. If this is true then this sets up a good opportunity to call upon the Planning Board to reduce the number of units by at least a third.

February 20, 2008 Update: In January a coalition of groups did a press conference on the high rate at which buffer requirements are reduced in the critical area. This publicity makes this issue a good one to focus on. I urge the Association to strive to make the Galloway Creek PUD the poster-child for this issue in Baltimore County. This additional negative publicity will serve to bias the Planning Board against the applicant's proposal.

In comments dated January 25, 2008, Julia Roberts, of the Maryland Critical Areas Commission, did not object to the buffer reduction but noted asked DEPRM

Impervious Surfaces

There are at least three impervious surface issues at play. Of course, an impervious surface is any feature which prevents rain from soaking into the earth and includes buildings, parking lots, streets, etc. The issues are: the 15% critical area cap, the requirement to reduce existing impervious area by 20% at redevelopment sites (which the applicant contends Galloway Creek PUD is), and the amount of impervious area that can exist in the Galloway Creek watershed without undue harm to the waterway.

15% Impervious Area Cap: This cap is based upon a study I conducted nearly 30 years ago². I guess this makes me the leading expert on this topic.

The table beneath Note 22, on Sheet 2 of 5 of the Concept Plan, states that proposed impervious area will be 44,760 square feet or 7.07% of the overall property. This figure appears to be based

² Klein, R.D., 1979. *Urbanization and stream quality impairment*. Water Resources Bulletin 15(4):948-963.

on the 14.5278 acres given in the table beneath Note 4. However, Note 1 gives the area covered by the requested PUD authorization as 3.5565 acres. If this is the appropriate acreage then site imperviousness will be 29%, well beyond the 15% maximum. The applicable regulation is §33-2-603 Limited Development Areas and Resource Conservation Area, which states:

(3) (i) The sum of all man-made impervious areas may not exceed 15% of the lot, parcel, or property proposed to be developed, except that:

1. If a one-half acre or less lot or parcel existed on or before December 1, 1985, man-made impervious surfaces may not exceed 25% of the lot or parcel;

2. If a lot or parcel greater than one-half acre and less than one acre existed on or before December 1, 1985, man-made impervious surfaces may not exceed 15% of the lot or parcel; or

3. A. If a one acre or less individual lot is part of a subdivision approved after December 1, 1985, man-made impervious surfaces of the lot may not exceed 25% of the lot; and

B. The total of the impervious surfaces over the entire subdivision may not exceed 15%.

I would like to discuss this issue with DEPRM staff to determine if they would consider the “lot, parcel, or property proposed to be developed” area to be 3.5565- or 14.5278-acres. If staff goes with the larger acreage, which they probably will, then I’d like to have a similar conversation with Maryland Critical Areas Commission staff, then with an attorney experienced in zoning law. I have not verified the applicant’s impervious area figures, but I can do so if the Association wishes.

February 20, 2008 Update: In comments dated January 25, 2008, Julia Roberts, of the Maryland Critical Areas Commission (MCAC), noted the same discrepancy as described above. Ms. Roberts assumed that the site area was 3.5565 acres and computed an imperviousness of 20.82% if the site is developed as proposed. I urge the Association to allow CEDS to lobby DEPRM and the MCAC to stand firm on this position.

Redevelopment & Stormwater Management: The applicant claims that existing impervious area on the site is 131,770 square feet and this will be reduced to 44,760 square feet post-development. The applicant also claims that all proposed development will occur on areas that are presently impervious.

The 2000 Maryland Stormwater Design Manual defines such a project as “redevelopment” and allows an applicant to “meet” their stormwater requirements by reducing existing impervious by 20%. Note 22, on Sheet 2 of 5 of the Concept Plan, states that this is exactly what the applicant

is proposing. As a result there will not be any measures to reduce the considerable pollutant loads which will wash from the site and into Galloway Creek.

February 20, 2008 Update: In comments dated January 25, 2008, Julia Roberts, of the Maryland Critical Areas Commission (MCAC), asked DEPRM to explain why the concept plan did not show any stormwater facilities. I urge the Association to allow CEDS to lobby DEPRM and the MCAC to require the use of highly-effective runoff control measures.

Watershed Imperviousness: According to data I obtained from DEPRM, the Galloway Creek watershed was 8.7% impervious in 1996-1997. No doubt the existing impervious area is higher. While my 1979 study called for an upper impervious area limit of 15%, numerous studies conducted since then show that tidal creeks cannot thrive at an imperviousness greater than 8%. Since Galloway Creek is just past this critical threshold I believe we are in a great position to call upon the Planning Board to limit impervious area by substantially reducing the number of units allowed.

A word of caution on this issue. The Water Quality Management Plan for Middle River Watershed shows that impervious area is 24% in the Galloway Creek watershed. I've asked DEPRM to tell me which of their figures is correct: 8.7% or 24%.

Sea-Level Rise

The first floor elevation of the proposed condominium building is set at 6.5-feet above sea level. I assume this is the tidal flood elevation. Various scientists are predicting a three- to fifteen-foot rise in sea level by the end of this century. With this rise in sea level will come at least an equal rise in tidal flood levels. Of course, this will put the first floor of the proposed building underwater during a storm-driven flood, maybe even during non-storm periods. I believe this is an issue which neither the County or other regulatory agencies have confronted. This is also a good example of one of those issues which seems like a loser at first blush, but may grow in importance later. Particularly when the next issue is considered.

February 20, 2008 Update: Further research into this issue was postponed pending the availability of additional financial resources.

Shoreline Erosion

The Maryland Environmental Resource Land Information Network (MERLIN) website³ shows that the Galloway Creek shoreline has generally been pretty stable, except in the vicinity of the Galloway Creek PUD site. This area is subject to wind-driven waves, which likely accounts for the high shoreline erosion rate. With sea-level rise, wave induced erosion will only worsen, which is yet another argument against locating a building with a large number of residents in this location.

³ <http://www.mdmerlin.net/>

February 20, 2008 Update: Further research into this issue was postponed pending the availability of additional financial resources.

Submerged Aquatic Grasses

The MERLIN website also shows that in recent years submerged aquatic vegetation (SAV) beds have been far more extensive along the Galloway Creek shoreline than in the 1990s. These grasses are critical to the abundance and diversity of fish, shellfish, and other aquatic species. The abundance of SAVs in and of itself is a good indication that Galloway Creek remains relatively healthy. SAVs are also quite vulnerable to the impact of watershed development. This reinforces the need to minimize impervious area within the watershed.

February 20, 2008 Update: Further research into this issue was postponed pending the availability of additional financial resources.

Sensitive Species Project Review Area

The MERLIN website also shows that the site is located within a Sensitive Species Project Review Area (SSPRA). An SSPRA encompasses land located within generalized areas supporting rare, threatened, and endangered species. Projects proposed within an SSPRA are usually the focus of more intensive review to determine if there would be an adverse effect upon rare, threatened, and endangered species. The applicant's Planned Unit Development Application states a watchlist plant is located in the general vicinity. It is possible, though not likely, the SSPRA was established to safeguard this plant. I will check with the Maryland Natural Heritage Program in hopes of learning what species the SSPRA does protect. With this information we can then determine how the project may impact the species.

February 20, 2008 Update: Further research into this issue was postponed pending the availability of additional financial resources.

SCHOOLS

Item #2.1, on page 4, of the Office of Planning Concept Plan comments requires:

2. *Written documentation which describes the effects of the proposed development on the environment, traffic flow and provision of public services and how any adverse impact will be mitigated.*

1. *The written documentation must include:*

*The effects of the proposed development on the environment, traffic flow, and on the provision of public facilities and services such as sewers, water, **schools**, police, fire, recreation, libraries, community centers, open space, or any other public facility or service which the county requests to be analyzed; [emphasis added]*

The only reference to schools in the Concept Plan Comments was the following on page 3, of the Office of Planning comments, which reads:

SCHOOL IMPACT ANALYSIS:

This development is subject to Section 32-6-103 of the Baltimore County Code, Adequate Public Facilities. A school impact analysis is required with development plan submittal. Information is available on the Baltimore County Office of Planning's Web Page. The proposal is within the boundaries of the following schools:

*Seneca Elementary School
Middle River Middle School
Kenwood High School*

The preceding certainly should not satisfy the requirement in the planning comments for a written submission regarding school impacts.

On January 10th I reviewed the Office of Planning file. The file contained a 79-page oversized document entitled Planned Unit Development Application - Galloway Creek. This was the only new document present in the file which might conceivably contain the written documentation. There was nothing in this document regarding schools.

Sheet 2 of 5, of the Concept Plan does contain a Note 24 which reads:

The property shown hereon does not lie within any area identified as being deficient on the basic services maps adopted by the Baltimore County Council April 16, 2007.

While the preceding statement may be true for the April 16, 2007 basic services maps, the current maps show that the site lies with the service area of a high school which exceeds the 115% overcrowding threshold. This school is, of course, Kenwood High. The basic services map showing this failed level of service can be viewed at:

www.baltimorecountymd.gov/Agencies/planning/public_facilities_planning/adequate_school_facilities.html

Normally, the test for overcrowded schools does not occur until after a development plan is approved. However, PUD regulation §32-4-245(c)(3) states:

The height, area, setback, parking, open space, sign and other development and zoning requirements of the underlying zone or district that apply in that portion of the proposed Planned Unit Development shall provide the base for the Planning Board's review. Unless otherwise shown on the approved PUD plan, the base development and zoning requirements shall apply. The concept plan shall indicate higher standards than the base requirements of the underlying zone. The Planning Board may condition approval of a PUD plan on higher design standards. Any reduction or modification in the applicable requirements of the underlying zone shall be predicated upon the Planning Board's finding

that they are necessary to achieve the intent and purpose of this section and are in the public interest.

I believe the preceding regulation may provide us with an opportunity to call upon the Planning Board to apply a higher standard and condition any approval on reducing school impacts by reducing the number of units allowed.

February 20, 2008 Update: Further research into this issue was postponed pending the availability of additional financial resources.

TRAFFIC

Following are two of a number of possible traffic issues associated with the Galloway Creek PUD.

Bike Route

Development regulation §32-4-245D(5) requires that:

The concept plan is in conformance with the goals, objectives, and recommendations of the Master Plan or area plans.

The Eastern Baltimore County Pedestrian and Bicycle Access Plan is part of the Master Plan. Therefore it is covered by this regulation as well. The plan calls for a bike lane along Bowleys Quarters Road. Bike routes are rated on a scale of A to F using a system known as the Bicycle Level of Comfort (BLOC). The plan calls for improving bike lanes to achieve a BLOC rating of C or better. Presently, Bowleys Quarters Road has a rating of F and proposed improvements will raise it to a C. If we can show that the increased traffic from 36 units instead of 8 or 10 would cause the BLOC (with improvements) to stay in the D or worse range then we might have a good argument. I suggest getting an opinion on this from both an experienced zoning attorney as well as a planner familiar with the Baltimore County Planning Board. Would you like me to do this?

February 20, 2008 Update: Further research into this issue was postponed pending the availability of additional financial resources.

Single Means of Access

Section XIII. Traffic Engineering Development, on page 22 of the [Bureau of Development Plans Review Policy Manual](#), subsection B(1) calls for no more than 100 residential units where a single means of access exists. While this policy has generally been applied to the very specific road serving a new development project, there are precedents for the County applying it to single access roads like Bowleys Quarter Road south of Susquehanna Avenue. For example, the Fischer Property project was proposed for an existing community in the Kingsville with a single means of access. There were 108 existing homes off of the road (Bluestone Road). The County did apply the spirit of this policy in the Kingsville case.

According to the 2000 Census there were 438 homes off Bowleys Quarters Road south of Susquehanna Avenue. I doubt that the 100-unit/single-means of access policy has ever been applied to new development with this many existing homes, but it could be a good legal issue. I urge the Association to get an opinion on the strength of this issue from an experienced zoning attorney. Would you like me to do this?

Road-Width & ADT Limit

A table appears on page 9, of the [Bureau of Development Plans Review Policy Manual](#), setting forth maximum Average Daily Traffic (ADT) based on road width. In at least two cases the Hearing Officer has approved a development plan with the condition that the applicant widen an existing road to meet the minimum width required by this table. Given the length of Bowleys Quarters Road which would need to be widened, such a condition would nix the Galloway Creek PUD.

Bowleys Quarters Road has a paved width of about 21 feet south of Clarks Point Road. Based upon the policy manual table, Bowleys Quarters Road should have an ADT of no more than 5,000 trips per day. According to the 2000 Census, there were 497 houses served by Bowleys Quarters Road south of Clarks Point Road. Generally, each house generates ten trips per day. So as of the year 2000, ADT on Bowleys Quarters Road would have been 4,970 or just 30 trips shy of the 5,000 ADT limit.

Today, eight years later, there are surely more than 500 houses where the sole means of access is Bowleys Quarters Road south of Clarks Point Road. However, this should be verified by either doing a count of houses while driving the streets in the area served by Bowleys Quarters Road (south of Clarks Point Road) and/or by doing a count from recent aerial photos, like Google Earth or the County's [My Neighborhood](#) site.

Also, the Widths given in the table were measured from the inner edge of the white line which borders Bowleys Quarters Road and I since learned that County policy calls for measuring the width from outer edge of pavement to outer edge of pavement. So the paved width of Bowleys Quarters Road should be measured at several locations between, say, Clarks Point Road and Galloway Road.

The Association should also do its own traffic count between Clarks Point Road and Susquehanna Avenue. I suggest doing a count from 6:30 AM to 9:00 AM on a couple of mornings (Tuesday to Thursday) when school is in session. Generally, morning peak hour traffic is 10% of ADT. So if we count more than 500 vehicles traveling Bowleys Quarters (between Clarks Point Road and Susquehanna Avenue) during the morning peak-hour then ADT is probably in excess of the 5,000 trip limit for a road 21-feet in width. If we find that ADT is above 5,000 then we should ask Carroll Holzer if it would be prudent to have a qualified traffic engineer verify these numbers and prepare a report for submission at the Planning Board hearing.

February 20, 2008 Update: On January 30th I sent a message to Darrel Wiles, the chief of the County's Bureau of Traffic Engineering (BTE), regarding both the 100-unit/single-means of

access issue and the Road Width-ADT limit issue in the context as one of the factors the Planning Board should look at when considering a rezoning request. Of course, I put the issue in this context so as not to give the applicant too early a tip-off that we plan to raise the issue when the Planning Board hears the PUD case.

I spoke with Mr. Wiles on February 7th then Steve Weber, also of BTE, on February 19th. The gist of these conversations is that they agree it would be appropriate for the Planning Board to consider both the 100-unit/single-means of access issue and the Road Width-ADT limit issues as one of the factors used to decide on a rezoning request. This does the following for us:

When the issues are raised at the March CZMP hearings the Planning Board will likely turn to Mr. Wiles after the hearing to ask if he thinks its reasonable to consider both issues as part of decision-making on a rezoning issue. It is now more likely (though not guaranteed) that his response will be: Yes.

This means that I believe it would be appropriate to hammer away at this issue during the Thursday, March 20th CZMP Planning Board hearing at Overlea Senior High School. This will provide us an opportunity to sensitize the Planning Board to both issues and how the limits should be applied to roads such as Bowleys Quarters. Again, this can only increase the likelihood that the Board members will be open to both issues if we get to a hearing on the Galloway Creek PUD.

ZONING

A number of important zoning issues were noted in the concept plan comments from the PDM Zoning Review section. Following are several additional issues.

Compatibility

Subparagraph D, of BCZR Section 215, Business Maritime Zones: General Statement of Legislative Intent, states:

- D. The Business Maritime Boatyard (B.M.B.) Zone is established to include uses which are more intense than the B.M.M. Zone and should generally not be mapped close to residential uses.

This paragraph indicates that it is a fundamental conflict to permit residential uses on a property zoned B.M.B., as is the Galloway Creek PUD site. A good zoning attorney might be able to make something of this, but since the PUD regulations allow residences in business zones I don't think we'll get very far.

February 20, 2008 Update: Further research into this issue was postponed pending the availability of additional financial resources.

Residential Density Conflict

BCZR Section 221 (Business Maritime Boatyard), Subsection B states that:

Subject to Subsection A, residential and institutional uses permitted and as limited in D.R.5.5 Zones are permitted as of right.

BCZR Section 430 (General development PUD), Subsection C(2) states:

2. If the underlying zone is classified as a business zone or an office zone or S.E. Zone, calculation of residential density may not exceed the density permitted in a D.R.16 Zone, except that in a mixed-use PUD in an O.T. Zone, the calculation of residential density may not exceed 32 units per acre. [Bill No. 35-2006]

We should consult with an experienced zoning attorney to determine which is the controlling language. In other words, is residential development in a B.M.B. PUD limited to 5.5- or 16- units per acre? Of course, the PDM - Zoning Review comments noted that the applicant may have incorrectly calculated the allowed density.

February 20, 2008 Update: Further research into this issue was postponed pending the availability of additional financial resources.

Spot Zoning

County Council Bill 16-2007 amended Section 430.3, of the Baltimore County Zoning Regulations (BCZR), to permit a general-development Planned Unit Development (PUD) outside the Urban Rural Demarcation Line (URDL) in a B.M.M. and B.M.B. zone in the Bowleys Quarters area. Only one such property meets the conditions contained in Bill 16-2007 and that is the site of the Galloway Creek PUD. Given this we should ask Carroll Holzer whether this constitutes spot zoning, which is illegal. If it does then this could be the basis for successfully blocking Planning Board approval of the Galloway Creek PUD.

It is my understanding that under Maryland case law, it is more likely that Bill 16-2007 would be spot-zoning if it conflicted with applicable master plans or area plans, such as the Bowleys Quarters Community Action Plan 2000. I suggest that an Association member review the plan for any text that conflicts with allowing a PUD on the Galloway Creek site.

February 20, 2008 Update: Allen Robertson reviewed the action plan and faxed a number of pages to me where he believes a conflict exists. I have postponed a review of these documents pending the availability of additional financial resources.

Rezoning Issue Hearing: The Association's Second Opportunity For Victory

Once every four years the Comprehensive Zoning Map Process (CZMP) allows anyone to request a change in zoning for any property in the county. Of course we're in the midst of CZMP 2008 right now. Three properties in the Bowleys Quarters area have been proposed for rezoning to B.M.B. or B.M.M. On Thursday, March 20th the Planning Board will hold a public hearing on

these and all other rezoning issues in the sixth Councilmatic District. The hearing will begin 7:00 PM at Overlea Senior High School and public sign-in starts at 6:00 PM.

The rezonings have the following issue numbers: 6-028, 6-040, and 6-041. All three can be viewed on the My Neighborhood Zoning website:

<http://www.baltimorecountymd.gov/Agencies/myneighborhood/zoning.html>

In a way, this is a **GREAT** opportunity to begin educating the Planning Board on why it is inappropriate to allow PUDs outside the URDL and on B.M.B. or B.M.M. zoned sites in particular. It is very likely that the March 20th hearing will take place well in advance of the Planning Board hearing on the Galloway Creek PUD. So, again, this is a fantastic opportunity to impress the Planning Board with the need to constrain PUDs outside the URDL and on B.M.B. sites.

I strongly urge you to shoot for an overwhelming turnout of citizens opposed to the Galloway Creek PUD at the March 20th hearing. Of course citizens should be coached to testify against the three requests to rezone other Bowleys Quarters properties to B.M.B. or B.M.M. They could use the many negatives of the Galloway Creek PUD to illustrate why the three rezonings are a bad idea. All three of the Bowleys Quarters rezonings are inside the URDL so we should focus on the negatives of PUDs on B.M.B. and B.M.M. as opposed to just PUDs outside the URDL. We could say PUDs are particularly harmful when outside the URDL, but still a problem even inside.

I urge you to contact the associations representing those who live near the three Bowleys Quarters rezonings. Obviously we want them and their members to turn out in large numbers at the March 20th hearing. I also urge you to consider doing a mailing to those living near the three rezoning sites. This is actually a lot easier than it sounds. We just did a mailing to 2,000 people living near 40 rezoning issues in the north county. Again, its easy and relatively cheap.

Finally, I urge you to consider holding your own community meeting around March 10th or so. The meeting would have two purposes: fund-raising and maximizing turn-out at the March 20th Planning Board hearing. If you follow our formula for the meeting then you should raise \$3,000 to \$10,000 in this one night with virtually no expenses. A small portion of the agenda would be devoted to suggestions for what folks should say should they chose to testify on March 20th. But you should also announce that its not necessary to testify to send the right message to the Planning Board. Instead, the Association spokesperson will ask those present to oppose the rezonings to stand. Hopefully most of the audience will stand at this point.

If done right, the impact you make at the March 20th hearing could not only set the stage for winning the Galloway Creek issue but to forcing Mr. Bartenfelder to find a graceful way of undoing his mischief with the PUD law.

BALTIMORE COUNTY PLANNED UNIT DEVELOPMENT REGULATIONS

§ 32-4-245. PLANNING BOARD REVIEW.

(c) Standards for review.

- (1) The Planning Board shall review the proposed Planned Unit Development for compliance with the requirements of the Baltimore County Zoning Regulations and the development regulations. The Planning Board may adopt rules and regulations for the conduct of its proceedings in accordance with the process of Article 3, Title 7 of the Code.
- (2) The Directors of the Office of Planning, Economic Development, Permits and Development Management, Community Conservation, Environmental Protection and Resource Management, Public Works and Recreation and Parks shall offer advisory comments to the Planning Board regarding the proposed Planned Unit Development, including comments on the mix and proportion of proposed uses and any affordable residential rental units proposed for a senior housing PUD. The Planning Board may refer any technical issue or other matter to the director of an agency for advice, including the conduct of an administrative hearing to resolve an issue. The director shall promptly report the agency's written findings and recommendations to the Board.
- (3) The height, area, setback, parking, open space, sign and other development and zoning requirements of the underlying zone or district that apply in that portion of the proposed Planned Unit Development shall provide the base for the Planning Board's review. Unless otherwise shown on the approved PUD plan, the base development and zoning requirements shall apply. The concept plan shall indicate higher standards than the base requirements of the underlying zone. The Planning Board may condition approval of a PUD plan on higher design standards. Any reduction or modification in the applicable requirements of the underlying zone shall be predicated upon the Planning Board's finding that they are necessary to achieve the intent and purpose of this section and are in the public interest.
- (4) The Planning Board may not alter the restrictions or conditions imposed by the County Council under § 32-4-242(c).
- (5) The Planning Board may require compliance of the plan with § 32-4-203⁴ and with any of the general design standards of Article 32, Title 4, Subtitle 4 of the Baltimore County Code.

(d) Basis for approval. The Planning Board may approve a proposed planned unit concept plan

⁴ § 32-4-203. BALTIMORE COUNTY DESIGN REVIEW PANEL.

only upon finding that:

- (1) The proposed development meets the intent, purpose, conditions, and standards of this section;
- (2) The proposed development will conform with Section 502.1.A, B, C, D, E and F of the Baltimore County Zoning Regulations and will constitute a good design, use, and layout of the proposed site;⁵
- (3) There is a reasonable expectation that the proposed development, including development schedules contained in the concept plan, will be developed to the full extent of the plan;
- (4) The development is in compliance with Section 430 of the Baltimore County Zoning Regulations; and
- (5) The concept plan is in conformance with the goals, objectives, and recommendations of the Master Plan or area plans.

BALTIMORE COUNTY ZONING REGULATIONS (BCZR)

430.3 General development PUD.

- A. Location. A general development PUD shall be located inside the urban rural demarcation line (URDL). A general development PUD may be located outside the urban rural demarcation line only in a B.M.M. or B.M.B. Zone in the Bowleys Quarters growth management area. [Bill No. 16-2007]
- B. Permitted uses.
 1. Residential uses. Residential uses are permitted in any residential or nonresidential zone subject to the compatibility requirements of § 32-4-402 of the Baltimore County Code.
 2. Nonresidential uses. Uses permitted, as a matter of right or by special exception, in a B.L., B.M., B.R., B.M.M., B.M.B., OR 1, OR 2, O-3, OT or S.E. Zone are permitted in any nonresidential zone. In a C.B. or B.L.R. Zone, only those listed uses are permitted.

⁵ Section 502.1 pertains to special exceptions. A special exception was granted for the existing boat yard. Site Proposal Note D, on Concept Plan Sheet 2 of 5, states that the special exception will be abandoned if the PUD is approved.

3. Mix of zoning. If the underlying zoning consists of nonresidential and residential zones, the residential and nonresidential uses may be reallocated on acreage anywhere within the designated PUD boundaries, but the building area of nonresidential uses in the residential zones may not exceed the building area otherwise permitted in the underlying nonresidential zones. Additionally, the density of the residential uses may not exceed the corresponding density allowed in the underlying residential zone. A residential and nonresidential use may overlap vertically to occupy the same acreage. Subject to the provisions of § 32-4-245 of the County Code, Section 102.2 of the Zoning Regulations does not apply to a mixed-use PUD.

C. Density.

1. If the underlying zone is classified residential, calculation of residential density may not exceed that of the underlying zone, and such density may be used anywhere within the PUD boundaries.
2. If the underlying zone is classified as a business zone or an office zone or S.E. Zone, calculation of residential density may not exceed the density permitted in a D.R.16 Zone, except that in a mixed-use PUD in an O.T. Zone, the calculation of residential density may not exceed 32 units per acre. [Bill No. 35-2006]
3. If the underlying zone is classified as a manufacturing zone, calculation of residential density may not exceed the density permitted in a R.A.E.1 Zone.
4. If the underlying zone is classified as an R.O. or R.O.A. Zone, calculation of residential density may not exceed the density permitted in a D.R.5.5 Zone.
5. This subsection is subject to the provisions of § 32-4-242(c) of the Baltimore County Code.

- D. Dwelling type. Subject to the provisions of § 32-4-242(c) of the Baltimore County Code, any type of dwelling is permitted.

Section 221, Business Maritime Boatyard (B.M.B.) Zone: Use Regulations [Bill No. 149-1992]

- A. The Chesapeake Bay Critical Area Local Protection Program enacted by Baltimore County on June 13, 1988, established buffer areas adjoining tidal waters and wetlands. Development and use of land within such buffer areas is limited to water-dependent facilities, as defined and regulated in COMAR 14.15.03 and in the county regulations enacted pursuant thereto.

B. Subject to Subsection A, residential and institutional uses permitted and as limited in D.R.5.5 Zones are permitted as of right.

C. Subject to Subsection A, the following uses are permitted by right:

1. Uses permitted by right in the B.M.M. Zone.
2. Boatyard.
3. Fabrication, storage or repair of fishing equipment.
4. Machine shop for repair of engines or marina equipment, provided that all activities are confined to a fully enclosed structure.
5. Research institute, for marine-related purposes.
6. Combinations of the above uses.

D. Subject to Subsection A, the following uses are permitted by special exception:

1. Uses permitted by special exception in the B.M.M. Zone.⁶
2. Commercial beach, including dressing rooms and snack bar.
3. Facilities for docking of boats for hire having a capacity to carry more than 20 passengers, including crew.

Section 222, B.M.B. Height Regulations [Bill No. 149-1992]

Same as in B.M.M. Zone.

Section 217, B.M.M. Height Regulations [Bill No. 149-1992]

Same as in B.M. Zone, except that the height may not exceed 40 feet.

Section 223, B.M.B. Area Regulations [Bill No. 149-1992]

Same as in B.M.M. Zone, except that a boatyard requires a minimum area of two acres.

⁶ Uses permitted by special exception in the B.M.M. zone: 1. Out-of-water storage facility, Class B in association with a marina only. [Bill No. 136-1996] 2. Restaurant, standard, more than 5,000 square feet gross floor area, provided the use is part of and within the lot line of a marine-related use. [Bill No. 136-1996] 3. Yacht club, if the area regularly used for preparing, serving or consuming food or beverages exceeds 5,000 square feet gross floor area, including outdoor seating area.

Section 218, B.M.M. Area Regulations [Bill No. 149-1992]

Same as in B.M. Zone, except that the floor area ratio may not exceed 0.33.

Section 224, B.M.B. Signage and Performance Standards [Bill No. 149-1992]

The signage regulations and performance standards are the same as in the B.M.M. Zone.

Section 219, B.M.M. Signage [Bill No. 149-1992]

Signs are permitted, subject to Section 450. [Bill No. 89-1997]