

IN RE: <b>DEVELOPMENT PLAN HEARING &amp;</b>	*	BEFORE THE
<b>PETITION FOR SPECIAL HEARING</b>		
End of Ivy Reach Ct.	*	ZONING COMMISSIONER
West of Happy Hollow Road		
<b>(Section Two - Curran Property)</b>	*	OF
8 <sup>th</sup> Election District		
2 <sup>nd</sup> Council District	*	BALTIMORE COUNTY
David D. Smith, <i>Legal Owner &amp;</i>	*	<b>Case Nos. 08-831 &amp;</b>
<i>Developer</i>		<b>2010-0193-SPH</b>
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**HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER**

This matter comes before the Hearing Officer/Zoning Commissioner of Baltimore County for a combined public hearing pursuant to Section 32-4-230 of the Baltimore County Code (B.C.C.), for development plan approval filed by David D. Smith (Developer). The plan was prepared by McKee & Associates, Inc. for property located at the terminus of Ivy Reach Court, west of Happy Hollow Road, in the Cockeysville area of the County. The subject property contains 103.3 acres, more or less, split-zoned R.C.4 and R.C.5, on which Developer proposes a total of nine (9) single-family detached dwellings and a conservancy area of 68.77 acres. Additional acreage within the subject property not required to support the nine (9) single-family dwellings or to be a part of the conservancy area for the development is labeled "PARCEL A1 17.785 acres Reserved For Possible Future Development."

In addition to development plan approval, Developer filed a Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) due to the split-zoning of the property. Specifically, Developer requests approval for the creation of undersized non-density R.C.4 portions of Lots 1, 2, 3, 4, and 9 and undersized non-density R.C.5 portions of Lots 5 and 7. The undersized portion of each lot listed in the petition is labeled as

“NONBUILDABLE” on the development plan and no improvements, including any accessory structures, are proposed within these non-buildable areas. The proposed development and requested zoning relief are more particularly described on the redlined Section Two Curran Property Development Plan submitted and marked into evidence as Developer’s Exhibit 1.

As to the history of the project, a concept plan for the proposed development was submitted to the County, and a Concept Plan Conference (CPC) was held on April 6, 2009, at 9:00 A.M. in the County Office Building. As the name suggests, the concept plan is a schematic representation of the proposed development and is initially reviewed by and between representatives of the Developer and the reviewing County agencies at the CPC. Thereafter, as required, a Community Input Meeting (CIM) is scheduled during evening hours at a location near the property to provide residents of the area an opportunity to review and comment on the plan. In this case, the CIM was held on May 7, 2009, at 7:00 P.M. at the Cockeysville Public Library, located at 9833 Greenside Drive, Cockeysville, Maryland. Members of the development team and the County’s representative attended, as well as a number of interested persons from the community. Subsequently, a development plan is prepared, based upon the comments received at the CPC and CIM, and the development plan is submitted for further review at a Development Plan Conference (DPC), which again, is held between the Developer’s representatives and County agency representatives to review and scrutinize the plan further. The Department of Permits and Development Management (DPDM) scheduled the DPC for February 10, 2010; however, due to impending inclement weather, this Department delayed the DPC and held it on February 17, 2010, at 9:00 A.M. Following the DPC, a Hearing Officer’s Hearing (HOH) for this development was scheduled for February 25, 2010, at which time the Developer introduced the development plan.

At the beginning of the public hearing, a preliminary motion was made by the citizens in attendance that Developer had not met the posting requirements for the development plan and special hearing request. They maintained that signs Developer posted were concealed during part of the posting period by snow that fell from two (2) storms prior to the hearing, although they did acknowledge seeing these signs. Certifications contained within the case file indicate that the property was properly posted with signs providing public notice of the hearing for at least 20 working days prior to the hearing and of the requested zoning relief for at least 15 consecutive days prior to the hearing, in order to notify all interested citizens of the date and location of the hearing. The matter was also advertised in *The Jeffersonian* newspaper. Two (2) signs were posted for the development plan and two (2) additional signs for the Petition for Special Hearing while only one of each sign is required. Having met these requirements, I made a finding at the hearing that Developer substantially complied with the notice requirements for this project as required by the County regulations. Additionally, it is important to note that the Court of Special Appeals has held that the requirement of notification may be satisfied by “actual” notice, which is the case here. *See, Largo Civic Ass’n v. Prince George’s Co.*, 21 Md. App. 76, 318 A. 834, 841 (1974). Notice requirements serve the purpose of alerting individuals and community associations who may oppose the relief requested of the time and location of the public hearing and the nature of the relief requested. Actual notice of this public hearing was provided as evidenced by the attendance and participation of Protestants at the public hearing.

Additionally, a scheduling issue was raised that the Department of Permits and Development Management did not comply with the Development Regulations by holding the DPC within 10 days of this hearing. Section 32-4-226 of the B.C.C. addresses DPC’s and requires only that this Department *schedule* the DPC for a date more than 10 days prior to the

public hearing. This provision was satisfied by the originally scheduled DPC date of February 10, 2010. The delay of the DPC by the Department of Permits and Development Management due to pending inclement weather is not a violation of the B.C.C. and does not require a second DPC as the citizens in attendance asserted.

At the public hearing, Arnold Jablon, Esquire and David Karceski, Esquire appeared as legal counsel for Developer. Developer presented as expert witnesses Geoffrey Schultz, professional land surveyor with McKee & Associates, Inc. (McKee), the consultants responsible for preparation of the development plan, and Mickey Cornelius, a professional traffic operations engineer with The Traffic Group, Inc. Three (3) individual property owners were also in attendance at the public hearing in this case, all of whom reside on Ivy Reach Court: Terry L. and Sharyn A. Musika (33 Ivy Reach Court) and John F. Graham, Jr. (24 Ivy Reach Court).<sup>1</sup>

Numerous representatives of the various Baltimore County agencies tasked with reviewing the plan attended the public hearing, including the following individuals from the Department of Permits and Development Management: Darryl Putty (Project Manager) and Tom Goode; Dennis Kennedy (Bureau of Development Plans Review); Jeff Perlow (Zoning Review Office), and Brad Knatz (Bureau of Land Acquisition). Also appearing on behalf of the County were David Lykens (Department of Environmental Protection and Resource Management), Curtis Murray (Office of Planning), Bruce Gill (Department of Recreation and Parks), and Lieutenant Roland Bosley, Jr. (Baltimore County Fire Department). Finally, the Maryland State Highway Administration (SHA) submitted a written comment and these and other agency

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<sup>1</sup> Michael R. McCann, Esquire appeared at the beginning of the public hearing and informed the Hearing Officer that he was unsure if he was representing a client in this matter. He stayed briefly, made the same preliminary motion with regard to the project's posting and left without taking part in the hearing. Following the conclusion of the hearing, Mr. McCann submitted a letter, received on March 22, 2010, entering his appearance on behalf of Falls Road Community Association and enclosed supporting documents that he requested be included in the file.

remarks are contained within the case file.

It should be noted at this juncture that the role of each reviewing County agency in the development review and approval process is to perform an independent and thorough review of the development plan as it pertains to its specific area of concern and expertise. The agencies specifically comment on whether the plan complies with all applicable Federal, State, and/or County laws and regulations pertaining to development and related issues. In addition, these agencies carry out this role throughout the entire development plan and approval process, which includes providing input to the Hearing Officer, either in writing or in person, at the hearing. It should also be noted that continued review of the plan is undertaken after the Hearing Officer's Hearing during the Phase II review of the project. This Phase II review continues until a plat is recorded in the Land Records of Baltimore County and permits are issued for construction.

Pursuant to B.C.C. Sections 32-4-227 and 32-4-228, which regulate the conduct of the Hearing Officer's Hearing, I am required first to identify any unresolved comments or issues as of the date of the hearing. Mr. Jablon, counsel for Developer, indicated that there was one unresolved County issue involving Ivy Reach Court and explained that this roadway and the right-of-way associated with it were never conveyed to Baltimore County by deed. This outstanding issue will be discussed below. Otherwise, Developer was not aware of any other unresolved issues with regard to the redlined development plan.

Next, I questioned the representatives of each of the County agencies regarding the existence of any outstanding issues. Their responses are summarized below:

**Department of Recreation and Parks:** Bruce Gill appeared on behalf of the Department of Recreation and Parks and confirmed that his department had no outstanding issues with regard to the development plan. In doing so, Mr. Gill confirmed that a waiver of

local open space requirements was requested for this project and approved by his department as reflected in an approval letter submitted as County Exhibit 3. Mr. Gill also noted that a 68.769 acre environmental greenway is shown on Developer's Exhibit 1 as "BALTIMORE COUNTY ENVIRONMENTAL GREENWAY EASEMENT" and testified that this greenway meets all of his department's requirements. Therefore, Recreation and Parks recommended approval of the plan.

**Department of Environmental Protection and Resource Management:** David Lykens appeared on behalf of the Department of Environmental Protection and Resource Management (DEPRM) and confirmed that DEPRM's Storm Water Management, Ground Water Management, and Environmental Impact Review sections had no outstanding issues with regard to the development plan. Mr. Lykens noted certain approvals that Developer had obtained from his office prior to the public hearing, which relate to the conservancy area shown on the development plan. County Exhibit 1 is an inter-office memorandum from DEPRM's director to the Hearing Officer, dated February 24, 2010, the purpose of which was to confirm that DEPRM had reviewed and approved the conservancy area as shown on Developer's Exhibit 1, in accordance with Section 1A03.5 of the B.C.Z.R. Consistent with Mr. Lykens testimony at the hearing, County Exhibit 1 also indicates that inclusion of the project's storm water management facility within the conservancy area had also been reviewed and approved by DEPRM, in accordance with Section 1A03.5.I of the B.C.Z.R. Specifically, it is the outfall for the storm water management facility that is shown within the project's conservancy area on the development plan. With these approvals secured by Developer, Mr. Lykens was able to recommend DEPRM's approval of the development plan.

**Office of Planning:** Curtis Murray appeared on behalf of the Office of Planning and provided the Hearing Officer with a school impact analysis for the project as County Exhibit 6. Based on the results of that analysis, Mr. Murray confirmed that this project is in compliance with the provisions of B.C.C. Section 32-6-103.

Additionally, Mr. Murray testified with regard to the proposed development and the performance standards of the R.C.4 and R.C.5 zones. Mr. Murray explained that, due to the split-zoning of the property, his office reviewed the development plan in the context of the performance standards contained in both RC zoning classifications. The R.C.4 zone's performance standards relate to the 68.769± conservancy area for this project and require not only approval by DEPRM, which is noted above, but also by the Office of Planning. Mr. Murray confirmed that the development plan satisfied the conservancy area standards contained in the R.C.4 Zoning Regulations from his office's perspective, and, on this basis, his office made a "positive finding" relative to the R.C.4 zone. Then, Mr. Murray provided the Hearing Officer with a copy of Developer's pattern book, introduced as County Exhibit 5, and confirmed that his office reviewed the pattern book and determined that the proposed development also fully complies with the performance standards of the R.C.5 zone. As Mr. Murray confirmed, based on his office review of the redlined development plan and pattern book, the Office of Planning determined that these submittals adequately address all of his agency's comments, and it recommended approval of the plan.

On the issue of a gated entrance for the project, the development plan shows a location for a proposed gate just west of where the private road for the project will connect with existing Ivy Reach Court. Mr. Murray requested that, if Developer decides to install a gate to serve this nine (9) lot subdivision, details for the gate be added to the pattern book. Developer agreed to

submit a supplemental page(s) to Planning for the pattern book if a gate is designed for installation for the project.

Finally, Mr. Murray noted that the Office of Planning does not oppose the Petition for Special Hearing.

**Zoning Review:** Jeffrey Perlow appeared as the representative for the Zoning Review Office and indicated that his agency had no outstanding issues with regard to the development plan provided the Petition for Special Hearing filed in Case No. 2010-0193-SPH is granted with development plan approval.

**Bureau of Land Acquisition:** Brad Knatz appeared on behalf of Land Acquisition and testified that his department had but one concern. The proposed development may not have direct access onto a public road and his concern was that this could be in violation of the County Code. Land Acquisition's position at the hearing was that the issue had to be resolved by the Hearing Officer. A plat recorded in 1999 (Developer's Exhibit 4) for the adjacent six (6) lot subdivision to the east shows that existing Ivy Reach Court (including all of the required right-of-way for this roadway), was dedicated to the County by the plat but it was never consummated by deed. Mr. Knatz explained that Ivy Reach Court is paved for a width of approximately 18 feet and, where it terminates in a cul-de-sac, the pavement area is 80 feet in diameter. The entirety of the paved area, while never turned over to County by deed, is maintained by the County. What the County does not maintain is an additional 10-foot wide County right-of-way, highlighted in orange on Developer's Exhibit 1, that surrounds the paved area of Ivy Reach Court on all sides. According to Mr. Knatz, this 10-foot strip is at issue because it was never formally deeded to the County.

The Developer called on Tom Goode with the Department of Permits and Development Management to testify following Mr. Knatz's testimony. Mr. Goode referred to a note of the record plat relevant to Land Acquisition's concern. This note, which is Note No.1 on the plat, reads as follows:

“HIGHWAYS AND HIGHWAY WIDENINGS, SLOPE EASEMENTS, DRAINAGE AND UTILITY EASEMENTS, ACCESS EASEMENTS, FOREST BUFFER AREAS IN FEE OR EASEMENT, FOREST CONSERVATION AREAS IN FEE OR EASEMENT, GREENWAY AREAS IN FEE OR EASEMENT AND STORMWATER MANAGEMENT AREAS, NO MATTER HOW ENTITLED, SHOWN HEREON ARE RESERVED UNTO THE OWNER AND EXCEPT FOR THOSE INDICATED AS PRIVATE ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND. THE OWNER, HIS PERSONAL REPRESENTATIVES AND ASSIGNS SHALL CONVEY SAID AREAS BY DEED TO BALTIMORE COUNTY, MARYLAND AT NO COST. UNTIL SUCH TIME AS SAID CONVEYANCE IS ACCEPTED BY BALTIMORE COUNTY, THE OWNER AUTHORIZES BALTIMORE COUNTY, ITS AGENTS AND ASSIGNS THE RIGHT TO ENTER UPON THE PROPERTY FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING AND REPAIRING ROAD, UTILITY LINES AND FACILITIES AND STORMWATER MANAGEMENT PONDS AND FACILITIES.”

Mr. Goode confirmed that, in fact, the residential subdivision shown on the 1999 record plat was inadvertently closed out in error by Land Acquisition as the County highway deed for Ivy Reach

Court wasn't, but should have been recorded prior to close out. Mr. Goode further confirmed that, from his department's perspective, all securities should not have been returned for the adjacent subdivision until after recordation of this deed, and the complete return of these securities was a mistake on the County's part.

**Bureau of Development Plans Review:** Dennis Kennedy appeared on behalf of the Bureau of Development Plans Review and confirmed that all issues were addressed on the redlined development plan and, therefore, approval was recommended. With regard to the gate that Developer may or may not install on this project's private road, Mr. Kennedy requested at the public hearing that Developer's engineer add a location for the gate to the development plan. Mr. Schultz, for the Developer, accommodated Mr. Kennedy's request and estimated a gate location, which is labeled "PROPOSED GATE" on the plan.

**Baltimore County Fire Department:** Lieutenant Roland Bosley, Jr. attended the public hearing for the Fire Department and testified that all of his department's comments had been addressed on the redlined development plan. For plan approval, his department required a letter from the Developer, acknowledging that any further subdivision of the subject property for creation of more than the nine (9) residential lots shown on this development plan will require the installation of a rural water supply for firefighting purposes or, in the alternative, all dwellings on the property will need to be equipped with individual sprinkler systems. A copy of this letter was submitted as County Exhibit 2. An easement area, labeled "FIRE SUPPRESSION EASEMENT," is shown on the development plan that would accommodate a fire suppression tank in the event that installation of a tank is necessary in the future.

With regard to Lot 5 of the proposed development, the Fire Department requested that Developer provide a turn-around area along the driveway for this lot that will allow for fire truck

access. The requested turn-around area was provided on the redlined development plan and Lieutenant Bosley, for his department, confirmed that the turn-around was acceptable in the location shown on the plan.

As Lieutenant Bosley confirmed, the Fire Department determined that the plan adequately addressed all of his department's comments, and it recommended approval of the plan.

Next, I asked the individuals attending the public hearing to state briefly what concerns they had about the proposed development.

Mr. John Graham resides at 24 Ivy Reach Court, located on the north side of Ivy Reach Court and east of the residential lots proposed by Developer. Mr. Graham's home is on one of the six (6) residential lots created by way of the plat recorded in 1999, submitted as County Exhibit 4. All of the lots shown on this plat are between 2.0 and 2.5 acres in size. Mr. Graham raised a concern for the size of the lots proposed by Developer, some of which are smaller in size and range from 1.13 acres to 2.058 acres. In his opinion, the lots as shown on Developer's Exhibit 1 are not appropriate when compared to the size of the other lots in his subdivision. Mr. Graham's other concern related to the amount of existing traffic on Happy Hollow Road and its existing conditions.

Terry and Sharyn Musika reside at 33 Ivy Reach Court, which is a lot that is part of the same 1999 residential subdivision. The Musikas' lot is located at the terminus of Ivy Reach Court and adjacent to a narrow parcel of land owned by Developer that will serve as access to the proposed development. A lot line shared with property owned by the Developer was at the center of the Musikas' concerns because they were unsure whether their existing driveway and other items, including some of their landscaping, are located on the Developer's property. To

clarify the location of the driveway, Developer's property line surveyor, Mr. Schultz, revisited the site and prepared an exhibit accepted into evidence as Developer's Exhibit 7. Developer's Exhibit 7 confirms that no part of the Musika's driveway is located on property owned by the Developer. It is important to note that any ongoing property disputes, if any exist, between Developer and the Musikas are not properly before the undersigned Hearing Officer and jurisdiction over any such disputes would rest with the Circuit Court. Second, the Musikas shared Mr. Graham's concern for the existing condition of Happy Hollow Road and the width of this roadway. Third, the Musikas are unhappy about the distance between their residential dwelling and this project's private road that will tie into Ivy Reach Court that they believe will impact the quiet enjoyment and privacy they enjoy. These concerns were addressed by the testimony of Mr. Schultz and Mr. Cornelius, Developer's traffic engineer, which are outlined below.

Moving to the formal portion of the hearing, Developer asked Geoffrey Schultz to present the redlined development plan. Mr. Schultz was accepted as an expert in the field of land surveying familiar with the zoning and development regulations applicable in this case. A copy of Mr. Schultz's resume was submitted as Developer's Exhibit 2. He presented a brief history of the property stating that prior to 1997, the subject property, now known as "Section Two - Curran Property," was part of a larger tract of land that included the existing six (6) lot subdivision adjacent to it.<sup>2</sup> In total, this tract of land contained approximately 117.61 acres. Mr. Schultz explained that Developer's Exhibit 1 provides a development history for the overall tract, which indicates that it was subdivided by way of a minor subdivision plan in 1997, the result of which is two (2) tracts of land labeled "TRACT A" and "TRACT B" on the development plan.

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<sup>2</sup> See Case No. VIII-665, dated March 31, 1997, in which Timothy M. Kotroco, acting as Hearing Officer, granted approval of the initial six (6) single-family dwelling development.

Tract A is now the six (6) lot subdivision recorded by the 1999 plat (Developer's Exhibit 4), within which the Musikas and Mr. Graham each own a lot. Tract B is the subject of this development plan, and, within it, the proposed nine (9) lot subdivision, the conservancy area lot, and Parcel A1 (reserved for future development). Tract B is 103.3 acres in area.

Following this brief review, Mr. Schultz provided an explanation of the available density associated with Developer's property. The density permitted on the R.C.4 portion of the property must be calculated separately from the density for the R.C.5 portion, as illustrated on the development plan. Based on the overall acreage shared by Tracts A and B, a total of 32 single-family residential dwelling are permitted, including 17 residential dwellings in the R.C.4 zone and 15 residential dwellings in the R.C.5 classification. While some of the density associated with the R.C.5 zone was used by the prior six (6) lot subdivision, nine (9) more residential dwellings remain and are permitted in the R.C.5 zone. Because no density in the R.C.4 zone has been used, all 17 residential dwellings are still permitted in this zone (for a total of 26 more dwellings). As shown on Developer's Exhibit 1, nine (9) dwellings are proposed far less than the remaining density (26). Only three (3) new single-family dwellings are proposed in the R.C.4 zone and six (6) new residential dwellings in the R.C.5 zone, leaving a total of 17 residential lots still available. Of course, more dwellings could be proposed in the future on the parcel of land reserved on this development plan for future development ("PARCEL A1"); however, to do so, an amended development plan and additional public hearing would be required prior to any approval.

As part of Mr. Schultz's testimony, a description of the property's location and the area surrounding the site was provided, and he introduced the development proposal as shown on Developer's Exhibit 1. The property is of an irregular shape bisected by the Beaver Dam Run.

Mr. Schultz noted that in order to reach the property from Padonia Road, motorists would travel north on Happy Hollow Road and then west on Ivy Reach Court through the previously described six (6) lot subdivision where the Musikas and Mr. Graham reside. An aerial photograph submitted as Developer's Exhibit 6 depicts these roadways. Developer proposes a private road that will extend in a westerly direction from the present terminus of Ivy Reach Court, around which the nine (9) residential lots are proposed. As stated, these lots will range in size from 1.113 acres to 1.86 acres in the R.C.4 zone and from 1.514 acres to 2.44 acres in the R.C.5 zone, and all meet the required minimum lot size. Each of the nine (9) lots will have frontage on and access to the new private road that terminates in a cul-de-sac and will serve this development only. Landscape plantings are to be installed on both sides of the private road and around the road's cul-de-sac, as shown on a landscape plan submitted as Developer's Exhibit 3. The balance of the property, with the exception of Parcel A1, will serve as the conservancy area lot for the property. As shown on the redlined development plan, this conservancy area will encapsulate the proposed residential lots to the north, west and south.

After confirming that the redlined development plan is a "variance-free" plan, Mr. Schultz offered his opinion that the plan (Developer's Exhibit 1) is in compliance with all applicable development regulations required by Baltimore County.

Developer then asked Mr. Schultz to address the performance standards of the R.C.4 and R.C.5 zones. He testified as to his familiarity with the performance standards of both "resource conservation" zones and provided his expert opinion that the proposed development, as shown on the redlined development plan, complies with all applicable performance standards. With regard to the R.C.4 performance standards, Mr. Schultz stated that the conservancy area satisfies all of the conservancy area requirements contained in B.C.Z.R. Section 1A03.5. Corroborating

Mr. Schultz's testimony, the Office of Planning and DEPRM, as required, reviewed and approved the conservancy area. Additionally, Mr. Schultz addressed the performance standards for the R.C.5 zone. He testified that he reviewed all of the R.C.5 performance standards contained in B.C.Z.R. Section 1A04.4.A through G and again provided his opinion that the proposed development satisfies all of these standards. The Office of Planning also made a finding of compliance with the performance standards of the R.C.5 zone, as required.

At this juncture, it is appropriate to address the concerns raised by Mr. Graham and the Musikas that pertain to the layout of the proposed lots. Mr. Graham raised the size of the lots as an issue. Simply put, there is no requirement in the B.C.Z.R. that lots proposed on a development plan be similar in size to nearby lots of another subdivision. A minimum lot size of one (1) acre is required in the R.C.4 zone and a minimum lot size of 1.5 acres is required in the R.C.5 zone. As discussed above and noted on the redlined development plan, the lots on this plan located in the R.C.4 zone exceed the one (1) acre minimum lot size requirement and the lots located in the R.C.5 zone also exceed the 1.5 acre minimum lot size. Additionally, while the lot lines on the development plan indicate some lots smaller than Mr. Graham's and his neighbors' lots, these lot lines will not be apparent in the field. In my opinion, what will be noticeable is the location of the nine (9) dwellings in the context of the larger parcel and surrounding conservancy lot area, which contains significantly more acreage than Mr. Graham's subdivision. The Musikas are unhappy with the distance between their dwelling and the dwelling proposed on Lot 1 of the development plan. The dwelling to be constructed on Lot 1 meets all applicable setback requirements of the B.C.Z.R. While Mr. Graham and the Musikas may not be happy with the proximity of these lots in relation to their lots or the size of the new lots, I find that all nine (9) lots proposed by the Developer comply with the B.C.Z.R.

As a rebuttal witness, Developer offered its traffic engineer, Mr. Cornelius, to testify regarding Happy Hollow Road and the amount of traffic now on this roadway. It was Mr. Cornelius' expert opinion that the nine (9) proposed residential dwellings would have no or minimal impact on Happy Hollow Road and its existing traffic.

The hearing then moved on to the Petition for Special Hearing. The requested relief was detailed in the petition filed and noted on the development plan. Specifically, Developer sought approval to allow for undersized, non-density portions of the split-zoned lots shown on the development plan. The purpose for this petition was questioned and explained to the Hearing Officer. The County's Zoning Review Office required Developer to file the petition to put any future owners of the split-zoned lots on notice that certain portions of their lots are non-buildable. The area of each lot to be non-buildable was highlighted in blue on the development plan by Mr. Schultz at the hearing.

Lots 1, 2, 3, 4, 5, 7 and 9 are all subject to this petition and, during the public hearing, Mr. Schultz explained that the majority of Lots 1, 2, 3, 4 and 9 are zoned R.C.5 with the proposed dwelling and all other physical improvements on each lot confined to the R.C.5 portion of it. In fact, on each of these lots, a small portion of the lot is zoned R.C.4; however the R.C.4 portions are labeled as "NONBUILDABLE." Mr. Schultz also explained that for Lots 5 and 7 the reverse is the case. The majority of each of these lots is zoned R.C.4, with the proposed dwelling and all other physical improvements to be on the R.C.4 portion of the lot; it is the R.C.5 portion of these lots that is marked as "NONBUILDABLE." He also confirmed that for each lot subject to this petition, the portion of it on which the dwelling is proposed meets or exceeds the minimum lot size. As a result, the non-buildable portion of each lot is not needed to support the single-family dwelling proposed on the lot. In my opinion, the Petition for Special Hearing will

serve its purpose, to notify any future lot owner that certain portions of Lots 1, 2, 3, 4, 5, 7 and 9 are non-buildable, and I will, therefore, grant the petition. Not only are the non-buildable areas of these lots shown on the development plan, but they will also be documented on the final development plan for the property.

As stated above, the only outstanding County agency issue related to Ivy Reach Court. Based on the evidence presented and the testimony provided by Mr. Knatz and Mr. Goode, clearly there is a 10-foot wide strip of land between the Developer's property and the paved surface of Ivy Reach Court that was not conveyed to the County by deed. However, testimony by Mr. Schultz and Mr. Goode confirmed that Developer has an easement that runs from his property all the way to Happy Hollow Road, which legally provides Developer, his heirs and assigns, access to and through Ivy Reach Court extending to Happy Hollow Road. A copy of this easement was submitted as Developer's Exhibit 5. Additionally, it is important to note that an opinion by the Court of Appeals in *United Finance Corp. v. Royal Realty Corp.*, 172 Md. 138 (1937) is the instructive. In this opinion, the Court discussed the difference between the rights of private property owners and that of the general public and explained that "a dedication may be incomplete as to the public but complete as to the abutting property owners who have bought land in reliance on the offer to dedicate." *See Id.* at 148. It is the opinion of this Hearing Officer that Developer's property has direct access onto Ivy Reach Court as required by Section 32-4-405 of the B.C.C., and this development plan may, therefore, be approved. I base my decision upon the easement that runs through Ivy Reach Court for the benefit of Developer's property and the note on the 1999 record plat for the adjacent six (6) lot subdivision, which clearly provides the County the authority to consider the unpaved right-of-way referred to previously as "access to a public street", as required by Section 32-4-405. *See Id.*

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.” *See* B.C.C. Section 32-4-229. After due consideration of 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 satisfies those agencies’ requirements, I find that the redlined development plan, marked and accepted into evidence as Developer’s Exhibit 1, is in compliance with the Baltimore County Code and all applicable policies, rules, and regulations. Therefore, having identified no remaining unresolved or outstanding issues that would prevent development plan approval, the Developer has satisfied his burden of proof and, therefore, is entitled to approval of the redlined Development Plan.

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 advertising of the property and public hearing held thereon, the redlined “SECTION TWO - CURRAN PROPERTY” Development Plan, shall be approved and, for the reasons set forth above, the Petition for Special Hearing shall be granted.

THEREFORE, IT IS ORDERED by this Hearing Officer/Zoning Commissioner for Baltimore County, this 31<sup>st</sup> day of March, 2010, that the “SECTION II - CURRAN PROPERTY” redlined development plan, identified herein as Developer’s Exhibit 1, be and is hereby **APPROVED**; and

IT IS FURTHER ORDERED that the Petition for Special Hearing requesting approval of the creation of undersized non-density R.C.4 portions of Lot Nos. 1, 2, 3, 4, and 9 and undersized non-density R.C.5 portions of Lot Nos. 5 and 7, be and is hereby **GRANTED**, subject to the following conditions:

1. Developer agrees to limit construction hours to between 7 AM and 6 PM Monday through Saturday. No parking of any construction (including contractors' employees) vehicles on the existing portion of Ivy Reach Court and particularly the cul-de-sac shall be permitted.
2. Developer shall, to the extent practicable, keep Ivy Reach Court free and clear of dirt and debris during construction. If Ivy Reach Court is not cleaned at the appropriate intervals required by the Baltimore County Code or other regulation, Developer shall be responsible for having the road cleaned within five (5) business days of being notified by the County.
3. General Note 15 contained on Exhibit 1 states: "Trash to be collected by Baltimore County". Said pickups will take place in front of the new lots located on the private – Ivy Reach Court and not at the cul-de-sac at the end of the public right-of-way.

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

WJW:dlw

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