

|  |                                |
|--|--------------------------------|
| IN RE: <b>DEVELOPMENT PLAN HEARING &amp;</b> * | BEFORE THE                     |
| <b>PETITION FOR SPECIAL HEARING</b>            | HEARING OFFICER                |
| W/S Allender Road, N Red Lion Road *           |                                |
| <b>(5737 Allender Road)</b>                    | FOR                            |
| 11 <sup>th</sup> Election District *           |                                |
| 5 <sup>th</sup> Council District *             | BALTIMORE COUNTY               |
| Operating Engineers Local 37 *                 |                                |
| <i>Owner/Petitioner</i> *                      |                                |
| Elm Street Development *                       | <b>Case Nos. XI-1065 &amp;</b> |
| <i>Developer/Contract Purchaser</i> *          | <b>2009-0140-SPH</b>           |
| * * * * *                                      |                                |

**HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER**

This matter comes before this Hearing Officer/Zoning Commissioner for a combined public hearing on a proposal submitted in accordance with the development review and approval process contained in Article 32, Title 4, of the Baltimore County Code (B.C.C.). At the public hearing in this case, contract purchaser and developer Elm Street Development (Developer) submitted for approval a red-lined development plan prepared by Morris & Ritchie Associates, Inc. for property located adjacent to and on the west side of Allender Road, south of Philadelphia Road, in the White Marsh area of Baltimore County. The subject property contains 67.9 acres of land, more or less, zoned D.R.3.5, on which Developer proposes a total of 173 single-family, detached residential dwellings. In addition to the development plan approval, Petitioner/Developer filed a Petition for Special Hearing, pursuant to B.C.C. Section 32-4-230 and Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to abandon the special exception approved in Case No. 75-271-RX, subject to conveyance of the subject property (5737 Allender Road) from the Legal Owner to the Contract Purchaser. As noted, the Operating Engineers Local No. 37 Pension Fund is the legal owner of the property.

Developer is also requesting a waiver of Public Works standards for the proposed on-site

public roadways to allow 28 foot wide pavement sections on a 40 foot right-of-way in lieu of the required 30 foot wide pavement sections on a 50 foot right-of-way. At the time of the hearing, the proposed development and requested waiver of standards were described on the seven- page, red-lined development plan (Developer's Exhibit 1A -1G).

Subsequent to the hearing, as will be explained below, the Developer circulated a revised development plan in the form of a "blue-lined" development plan to all of the County reviewing agencies, and following their reviews, Developer submitted the same development plan to the undersigned Hearing Officer. This blue-lined plan, described in detail below, is also a seven-page plan, entitled "5737 ALLENDER ROAD", and was accepted into evidence as Developer's Exhibit 8A through 8G.

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 September 24, 2007, 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 and is designed to provide residents of the area an opportunity to review and comment on the plan. In this case, the CIM was held on October 25, 2007, at the White Marsh Library, 8133 Sandpiper Circle, Nottingham, Maryland 21236. Members of the development team and the County's representatives attended the CIM, as well as interested persons from the community. Subsequently, a development plan is prepared, based upon the comments received at the CPC and the 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 the reviewing County agency representatives to review and scrutinize the plan further. In this case, DPC's were held on September 10, 2008, and November 12, 2008, in the County Office Building. The fourth

and final phase of the review process requires a Hearing Officer's Hearing (HOH) for this proposed development, conducted in accordance with the rules governing administrative hearings in this State. In this case, the Hearing Officer's Hearing was held before me on December 4, 2008.

By the agreement of all parties appearing in this case, the record was held open for a period of approximately fifteen (15) months from the date of the December, 2008 hearing to allow the Developer to revise the red-lined development plan (Developer's Exhibit 1A-1G) to address comments from the Department of Environmental Protection and Resource Management (DEPRM), Bureau of Development Plans Review, and Office of Planning and to allow these County Agencies additional time to review a revised development plan. The result the agencies' review following the public hearing, is the blue-lined development plan (Developer's Exhibit 8A - 8G) referenced above. All of the reviewing County Agencies, including those agencies that requested additional time to review the development plan, have either countersigned a letter authored by Developer's counsel or sent an electronic mail transmission to the Hearing Officer confirming that each agency has reviewed and now recommends to the Hearing Officer approval of Developer's Exhibit 8A through 8G. It is, therefore, this blue-lined development plan that is the subject of this Hearing Officer's decision. The record having been completed and as required, this decision follows.

Appearing in support of this project were David Murphy and Russ Dickens on behalf of Elm Street Development. Arnold E. Jablon, Esquire and David H. Karceski, Esquire appeared as counsel for the Developer/Petitioner. On behalf of Developer, they presented as an expert witness Thomas E. Wolfe, a registered landscape architect with Morris & Ritchie Associates, Inc. (MRA), the consultants responsible for preparation of the red and blue-lined development plans. Robert W. Bowling, a licensed professional engineer with MRA, Francesco S. Gentile, a registered landscape architect with Geo-Technical Associates, Inc., and Mickey Cornelius, a professional traffic engineer with The Traffic Group, Inc., also attended the public hearing. Two (2) interested persons were in attendance, Virendra Satyarthi, residing at 5613 Harvey Court, and Stuart

Simms, who resides at 5737 Allender Road.

Numerous representatives of the various Baltimore County agencies who reviewed the plan also attended the hearing, including the following individuals from the Department of Permits and Development Management (DPDM): Colleen Kelly (Project Manager); Dennis Kennedy (Bureau of Development Plans Review); Bruno Rudaitis (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 Edward C. Adams, Jr., Director and John Ruke, Chief, Highways Design (Department of Public Works). Finally, written comments were received from the Baltimore County Fire Marshal's Office and the Maryland State Highway Administration. These and other agency remarks are contained within the case file. The official record of the proceedings was recorded by Paula J. Eliopoulos, a court reporter, with Gore Brothers, 410-837-3027.

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. As indicated above, and as a result of comments received in this case, a continued review of the development plan was undertaken following the conclusion of the formal portion of the hearing. Development plans, in general, are reviewed 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. Karceski, counsel for Developer, indicated that one County reviewing agency, DEPRM, had not yet completed its review of the red-lined development plan. DEPRM reported as such at the public hearing. All other reviewing County agencies were in a position to recommend approval of the red-lined development plan at that time. Because review of the development plan was incomplete, this Hearing Officer decided to keep the record open in order to allow for a complete review of the plan. The positions of all of the County agencies provided at the public hearing regarding the redlined development plan and, if applicable, the requests of the agencies to later review the final version of the development plan (blue-lined development plan) subsequent to the hearing are summarized below:

**Recreation and Parks:** Bruce Gill appeared on behalf of the Department of Recreation and Parks and confirmed that the red-lined development plan satisfies the local open space requirements for the proposed 173 single-family detached residential dwellings. On this basis, Mr. Gill's department recommended approval of the red-lined development plan.

**DEPRM:** David Lykens appeared on behalf of DEPRM and indicated that his department had not yet had a chance to review the red-lined development plan presented at the public hearing. Mr. Lykens confirmed that he would, on behalf of his department, send written confirmation of development plan approval to this Hearing Officer without the need to reconvene the public hearing in this case.

**Bureau of Land Acquisition:** Brad Knatz appeared on behalf of the Bureau of Land Acquisition and confirmed that his agency had no outstanding issues with the red-lined development plan. Approval was, therefore, also recommended by Land Acquisition.

**Bureau of Development Plans Review (DPR):** Dennis Kennedy appeared on behalf of the Bureau of Development Plans Review. Mr. Kennedy explained that the Director of the Department of Public Works, and the Developer had met prior to the hearing in this case and arrived at an understanding regarding an extension of New Forge Road and Developer's responsibilities related to this roadway. Mr. Kennedy requested to review the revised development plan submitted after this public hearing to ensure that the requests made by DPR and Public Works are satisfied by the final version of the development plan.

The development plan comments prepared by DPR for the second DPC addressed the waiver of Public Works Standards requested by Developer. These DPC comments include a written statement that that the Director of Public Works will support the requested waiver of standards to provide 28-foot pavement widths on a 40-foot right-of-way instead of 30 feet of pavement on a 50-foot right-of-way.

At the conclusion of his testimony, Mr. Kennedy also said that he would, on behalf of DPR, send written confirmation of development plan approval to this Hearing Officer without the need to reconvene the public hearing.

**Zoning Review Office:** Bruno Rudaitis appeared as a representative of the Zoning Review Office and indicated that all of his agency's comments had been addressed on the red-lined development plan, and, provided the Hearing Officer grants the Petition for Special Hearing along with the development plan approval, there were no unresolved issues from his office's perspective. Plan approval was, therefore, recommended by Mr. Rudaitis.

**Planning Office:** Curtis Murray appeared on behalf of the Office of Planning to testify with regard to the red-lined development plan. Mr. Murray explained that his Office was in the process of completing the school impact analysis for the project and confirmed that there are “adequate public facilities ultimately to support the development with reference to schools.” Mr. Murray agreed that his office would provide the Hearing Officer a copy of the completed school impact analysis as Baltimore County Exhibit 1. A copy of the completed analysis has been provided and added to the Hearing Officer’s file.

Additionally, Mr. Murray testified regarding the three (3) proposed cul-de-sacs internal to the property. As an alternative to providing landscaped islands at the center of each cul-de-sac, as specified in B.C.Z.R. Section 260.4.B, the Planning Office agreed to cul-de-sacs with mountable curbs, the center of which are to be a stamped bituminous concrete that resembles a brick pattern. A cul-de-sac paving exhibit, approved by the Planning Office, was marked and accepted into evidence as Developer’s Exhibit 3. Mr. Murray, for Planning, testified that the stamped bituminous concrete design provided on Developer’s Exhibit 3 in combination with enhanced landscaping outside of the cul-de-sacs is acceptable to Planning.

With regard to landscaping, Developer and Planning agreed to work together following this public hearing to arrive at mutually agreeable landscaping to be installed on the west side of New Forge Road extended in the vicinity of Lot 1 and the cul-de-sac closest to the roadway. The blue-lined development plan (Developer’s Exhibit 8A-8G) provides for landscaping in this area to the satisfaction of the Planning Office as evidenced by Mr. Murray’s countersignature of the February 16, 2010, letter to the Hearing Officer.

Lastly, Mr. Murray referred to a pattern book submitted by Developer to the Office of Planning, which was approved by Planning. A copy of this pattern book was marked and

accepted into evidence as Developer's Exhibit 4. Based on the above-information, as well as the red-lined development plan meeting and all other Office of Planning comments, Mr. Murray recommended approval, pending his review of the final version of the development plan submitted following this public hearing.

Next, I asked the individuals attending the public hearing to state briefly what concerns they had about the proposed development. In short, they had none. Mr. Satyarthi resides on the north side of the proposed development and, more specifically, north of and adjacent to a large forest conservation area, shown on Developer's Exhibit 8 as "BALTIMORE COUNTY FOREST CONSERVATION EASEMENT NO. 4." Virendra Satyarthi expressed his appreciation for the Developer's decision to shift the location of certain residential lots originally planned to be located next to his lot and, instead, to provide a forest conservation easement area of significant width along the southern boundary line of his lot. Mr. Stuart Simms is not a resident of the area like Mr. Satyarthi, rather, he works at the Operating Engineer's Training School approved by way of the special exception granted in Case No. 75-271-RX. Mr. Simms was aware that, with approval of this residential development plan and abandonment of the special exception granted in Case No. 75-271-RX, the training school would move to a new location and cease to operate on the property.

Moving on to the more formal portion of the hearing, Counsel for Developer asked Tom Wolfe to present the red-lined development plan. Mr. Wolfe was accepted as an expert in the field of land planning, landscape architecture and familiar with the County development regulations. As part of Mr. Wolfe'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 1A-1G. He noted that a BGE right-of-way splits the site into two (2)

triangular pieces and identified the location of the subject property in relation to the surrounding public roadways in the vicinity of the site, explaining that Developer is proposing two (2) vehicular ingress/egress points for this 173 dwelling development onto existing Allender Road. As shown on Exhibit 8E, Lots 122, 123 and 124 will have direct access to Allender Road/or future New Forge Road. Additionally, Mr. Wolfe confirmed that, indeed, Developer did revise an earlier version of the development plan in order to provide a forest conservation easement area between Mr. Satyarthi's lot and other residential lots to the north of the property. After confirming for the Hearing Officer that the red-lined development plan is a "variance-free" plan and with the exception of DEPRM's ongoing review, Mr. Wolfe offered his opinion that the red-lined Development Plan (Developer's Exhibit 1A-1G) fully complies with all applicable development regulations and applicable policies, rules and regulations.

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, or 5 of Title 32 of the Baltimore County Code. Developer requests the waiver to allow the on-site roadways, which will be dedicated to the County, to have 28 foot wide pavement sections on a 40 foot right-of-way in lieu of the required 30 foot wide pavement sections on a 50 foot right-of-way. On this issue, Developer also presented Mr. Wolfe, who explained that the requested waiver is, in his expert opinion "minimal"; Developer is requesting only a 2 foot reduction of the otherwise required paved section for the on-site roadways. Additionally, the on-site roads will serve only the single-family detached dwellings proposed on this property, as shown and indicated on Developer's Exhibit 1A-1G, and that use of these roads, now and in the future, will be limited to only these residential dwellings. A connection between this residential development and any

other adjacent properties is not possible given this development plan layout, the location of CSX railroad tracks to the south of the property, and the existing road patterns of the neighboring subdivision. Insisting that Developer redesign these roadways to provide for a wider pavement width and right-of-way would result in unnecessary hardship without any resulting benefit or purpose being served. Developer would be required to provide additional road pavement width and right-of-way that is not necessary to serve the proposed residential dwellings, and the result would be an undesirable reduction of front yard areas provided for the single-family residential lots. The Director of the Department of Public Works has recommended approval of this waiver.

Based on the evidence and testimony presented in support of the waiver and the positive recommendation provided by the Department of Public Works, I find sufficient justification as described above for the request and, pursuant to B.C.C. Section 32-4-107(a), I will approve the requested waiver.

The blue-lined development plan (Developer's Exhibit 8A-8G) incorporates certain revisions to the red-lined development plan (Developer's Exhibit 1A-1G) not presented at the public hearing in December of 2008. Specifically, the blue-lined changes to the development plan relate to the following: changes to on-site grading (*See* sheets 8D, E, F, G); relocation of the cul-de-sac closest to New Forge Road extended to increase the distance between this roadway and the cul-de-sac (*See* sheet 8E); elimination of an internal vehicular connection from this cul-de-sac to Lot Nos. 122, 123, and 124 (*See* sheet 8E); provision of individual driveways for Lot Nos. 122, 123, and 124 in place of this vehicular connection from the cul-de-sac (*See* sheet 8E); and additional landscape plantings along New Forge Road extended in the vicinity of the cul-de-sac closest to this roadway (*See* sheet 8G). At the public hearing in this case, I explained that

any changes to red-lined development plan would be further reviewed by all the reviewing County agencies following the public hearing and that each agency would confirm to the Hearing Officer, in writing, that it recommends approval of the blue-lined development plan. In this case, I have received such confirmation from all required reviewing County agencies. *See* Developer's Exhibit 10.

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 blue-lined development plan satisfies those agencies' requirements, I find that the blue-lined development plan, marked and accepted into evidence as Developer's Exhibit 8A through 8G, is in compliance with the County's development regulations. Therefore, having identified no unresolved or outstanding issues that would preclude development plan approval, the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the blue-lined Development Plan.

As to the request for special hearing, Petitioner/legal owner requests that the grant of this petition be conditioned upon the later of conveyance of the subject property to Developer or the vacating of the property by the Operating Engineers. Until settlement and for a certain amount of time thereafter, if needed, the Operating Engineers may continue to operate the special exception use on the property, and it is undeniably their right to do so. In my experience, special hearings such as this one are required by the Zoning Review Office in order to document the cessation of past uses permitted by special exception and to provide a consistent paper trail to properly account for a property's zoning history. That said, the filing of this petition is

consistent with the Zoning Review Office's system of record keeping, I will grant the Petition, as requested by the Petitioner/legal owner, in the instant case.

Pursuant to the zoning and development plan regulations as contained in the B.C.Z.R. and Article 32, Title 4, of the Baltimore County Code, the blue-lined development plan, requesting waiver(s) and zoning relief, shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/ Hearing Officer for Baltimore County, this 11<sup>th</sup> day of March, 2010, that the **"5737 ALLENDER ROAD"** blue-lined Development Plan, identified herein as Developer's Exhibit 8A through 8G, be and is hereby APPROVED; subject to the following conditions:

1. Developer shall provide bituminous concrete stamped islands, as shown and indicated on Developer's Exhibit 3, in the center of each of the three (3) cul-de-sacs provided on the development plan. The bituminous concrete stamping within each cul-de-sac shall be gray in color.
2. The imposition of the above condition is due to the unusual facts and circumstances of the subject property that is the subject of this Hearing Officer's Hearing. I wish to clarify that the decision to impose Condition No. 1 is not legal precedent that may be cited by any applicant(s) as such in another development plan case(s).
3. The Petition for Special Hearing granted below in Case No. 2009-0140-SPH to abandon the special exception granted in Case No. 75-271-RX is conditioned upon the conveyance of the subject property to Developer or the vacating of the property by the Operating Engineers, whichever is later in time.

IT IS FURTHER ORDERED by this Zoning Commissioner/Hearing Officer, that the waiver from Public Works standards to permit 28 foot wide pavement sections on a 40 foot right-of-way in lieu of the required 30 foot wide pavement sections on a 50 foot right-of-way, be and is hereby APPROVED; and

IT IS FURTHER ORDERED by this Hearing Officer/Zoning Commissioner, that the Petition for Special Hearing to abandon the special exception relief approved in Case No. 75-271-RX, is hereby GRANTED and shall become effective upon the conveyance of the subject property (5737 Allender Road) from the Legal Owner to the Developer or the vacating of the property by the Operating Engineers, whichever is last to occur.

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

WJW:dlw

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