

RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
& PETITIONS FOR SPECIAL HEARING,		
VARIANCE & SPECIAL EXCEPTION	*	HEARING OFFICER
E side Old Court Road; 55 feet S of		
the c/l of Church Lane	*	FOR BALTIMORE COUNTY
2 nd Election District		
4 th Councilmanic District	*	
(5105 Old Court Road)		
	*	
CSI Support and Development Services		HOH Case No. 02-615 and
<i>Developers</i>	*	Zoning Case No. 2010-0034-SPHA

* * * * *

HEARING OFFICER’S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for Baltimore County for a public hearing on a development 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.”). CSI Support and Development Services, the owners and developers of the subject property (hereinafter “the Developer”), submitted for approval a development plan prepared by Robert S. Rosenfelt, P.E., with Colbert Matz Rosenfelt, Inc., known as the “THIRD AMENDED DEVELOPMENT PLAN” for Randallstown III Nonprofit Housing Corporation for property located on the southeast side of Old Court Road, north of Liberty Road and south of Church Lane in the Randallstown area of Baltimore County. The Developer proposes the creation of Lot 4 and Lot 5 for the purpose of a residential use and a cemetery, respectively. The Plan was the subject of two previous amendments.

The Developer is also requesting certain zoning relief that includes the following: Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To approve an amendment to the approved site plans in zoning Case No. 06-019-SPHX and Case No. 01-178-X; and

- To reduce the acreage of the Special Exception approved in Case Nos. 01-178-X and 06-019-SPHX from 6.44 acres to 6.25 acres by removing the in-fee access strip and therefore to approve a minor density calculation change from the approved 9.01 density units per acre on Lot 3 to 9.16 density units per acre; and

Variance request as follows:

- From Section 1B01.1.B.1.e(5) of the B.C.Z.R. to permit a Residential Transition Area (“RTA”) setback of 45 feet in lieu of 75 feet required; and
- From Section 1B01.1.B.1.e(3) of the B.C.Z.R to permit an RTA buffer of 0 feet in lieu of 50 feet required for the portion of a storm water management structure on Lot 3; and

Special Exception request as follows:

- To permit a cemetery in a D.R.5.5 Zone in accordance with Section 1B02.1 of the B.C.Z.R.

Details of the proposed development and the requested zoning relief are more fully depicted on the Revised Plan to Accompany Special Exception, Special Hearing and Variance Petitions (for Third Amended Development Plan) Randallstown III Nonprofit Housing Corporation that was marked and accepted into evidence as Developer’s Exhibit 1.

Appearing at the requisite public hearing in support of the Development Plan and requested zoning relief on behalf of the Developer, CSI Support and Development Services, were Cheryl Ross, Regional Manager, and Scooter Monroe. Jeffrey H. Scherr, Esquire, appeared as attorney for the Developer, as well as on behalf of the Mt. Olive United Methodist Church. Also appearing in support of the Development Plan and requested zoning relief was Robert S. Rosenfelt with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the development and zoning relief plans. There were no Protestants, members of the community, or

other interested persons in attendance at the hearing.

Numerous representatives of the various Baltimore County agencies who reviewed the plan and zoning petitions also attended the hearing, including the following individuals from the Department of Permits and Development Management: Colleen Kelly (Project Manager), Dennis Kennedy (Development Plans Review), Jeffrey Perlow (Zoning Review Office), and Brad Knatz (Bureau of Land Acquisition). Also appearing on behalf of the County were David Lykens from the Department of Environmental Protection and Resource Management (DEPRM); Lloyd Moxley from the Office of Planning; and Bruce Gill from the Department of Recreation & Parks. In addition, 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.

It should be noted at this juncture that the role of the reviewing County agencies in the development review and approval process is to perform an independent and thorough review of the development plan as it pertains to their specific area of concern and expertise. The agencies specifically comment on whether the plan complies with all applicable Federal, State, and/or County laws, regulations, and policies 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 continues until a plat is recorded in the Land Records of Baltimore County and permits are issued for construction.

In order to put the instant matter involving the proposed development and related zoning petitions into context, some background into the zoning and development history of the property would be beneficial. The subject property originally consisted of approximately 24.551 acres,

more or less, zoned D.R.5.5 and owned by the Mt. Olive United Methodist Church. The church building and an adjacent cemetery were (and are presently) located on the site. In the late 1990's, Cooperative Services, Inc. and the Church sought to develop the property with affordable elderly housing. As such, they proposed a plan to create Lot 3 on the property and build a two-story elderly housing facility consisting of 74 units. Lot 3 would consist of approximately 6.44 acres and be known as 5107 Old Court Road. In order to do so, the Church and Cooperative Services, Inc. filed for certain special exception relief from Section 432.3.A.1 of the B.C.Z.R.¹ in order to increase the density from the 47 density units allowed at that time to 74 density units. In Case No. 01-178-X, then-Deputy Zoning Commissioner Timothy M. Kotroco issued an Order dated January 17, 2001 approving the increase in density from 47 density units to 74 density units of elderly housing on an institutional site at a density of 8.6 units per acre. Thereafter, Randallstown Nonprofit Housing Corporation was completed in 2003. A copy of the Order was marked and accepted into evidence as Developer's Exhibit 3.

A few years later, with the demand for affordable elderly housing continuing to increase, the Church and Cooperative Services, Inc. again sought to develop a portion of the original 24 acre tract with another elderly housing facility. In that instance, they proposed to create Lot 2 on the property and build another elderly housing complex with 74 one-bedroom units and one two-bedroom unit. Once again, in order to do so, the parties filed for certain special exception as well as special hearing relief. As before, the special exception from Section 432.3.A.1 of the B.C.Z.R. sought an increase in density from that which is permitted in the D.R.5.5 Zone up to 12.84 density units per acre. The special hearing relief was requested to approve an amendment

¹ Section 432.3 of the B.C.Z.R. set forth the provisions for modifying or waiving maximum residential density standards for elderly housing facilities on property containing institutional or historic buildings. This section allowed the Zoning Commissioner to modify or waive these standards by special exception. In particular, Section 432.3.A.1 permitted a density increase if it was determined that the development involves an institutional site where the existing institutional use will be continued on a portion of the site and an elderly housing facility will be developed on the remainder. Section 432 was repealed by Bill No. 199-2004.

to the site plan approved in Case No. 01-178-X, pursuant to parking and storm water management integration with the special exception, to approve a minor density calculation change from the previously approved 8.6 density units per acre to 9.01 density units per acre for Lot 2 parking to be located on part of Lot 3, and to amend the Final Development Plan for “Randallstown Cooperative Housing.” In Case No. 06-019-SPHX, then-Deputy Zoning Commissioner John V. Murphy issued an Order dated August 3, 2005 granting the increase in density to 12.84 density units per acre of elderly housing on an institutional site. He also granted the special hearing requests to amend the site plan in Case No. 01-178-X, to approve the minor density calculation changes from the previously approved 8.6 density units per acre to 9.01 density units per acre, and to approve an amendment to the Final Development Plan for “Randallstown Cooperative Housing.” Thereafter, Randallstown II Nonprofit Housing Corporation was completed in 2003. A copy of the Order was marked and accepted into evidence as Developer’s Exhibit 4.

At this juncture, the Developer now wishes to further develop the remainder of the subject property. In particular, as shown on the Third Amended Development Plan, the Developer proposes to create Lots 4 and 5 in order to construct another elderly housing facility and to set aside an area for an existing cemetery use, respectively.²

In furtherance of this project, the Developer’s attorney, Mr. Scherr, and the Developer’s representative, Ms. Ross, met with Department of Permits and Development Management Director Timothy M. Kotroco on April 8, 2009 in order to determine the proper manner of proceeding with the proposed development. At that time, it was determined that the Developer

² The Developer is utilizing the Planned Unit Development (“PUD”) process for the proposed elderly housing facility on Lot 4. A Concept Plan dated July 7, 2009 that included a site proposal map, grading plan, and PUD plan was submitted to the County for the proposed “Randallstown III Nonprofit Housing Corporation.” This Concept Plan was marked and accepted into evidence as Developer’s Exhibit 2. The Developer is undergoing the PUD process as a parallel process to this Hearing Officer’s Hearing and related zoning Petitions. Before the PUD process can continue in any meaningful manner, it is necessary that the Developer obtain approval of the development plan for the proposed Lot 4 and the related zoning Petitions.

would seek approval of a Planned Unit Development (“PUD”) for the elderly housing facility, as well as simultaneously seek development plan approval and approval of the special exceptions to reduce the acreage of a previously granted special exception, and to permit the cemetery on proposed Lot 5.

Subsequently, on August 12, 2009, the Third Amended Development Plan was prepared, including a Revised Plan to Accompany Special Exception, Special Hearing, and Variance Petitions, and was submitted for review at a Development Plan Conference (“DPC”), which is held between the Developer’s consultants and County agency representatives to review and scrutinize the plan. The DPC occurred on September 2, 2009 at 10:00 AM in the County Office Building. The combined Hearing Officer’s Hearing and Zoning Hearing for this proposed development was then scheduled for October 30, 2009 at 9:00 AM in Room 106 of the County Office Building, 105 West Chesapeake Avenue in Towson, Maryland. Certifications contained within the case file indicate that the property was properly posted with signs that provided public notice of the Hearing Officer’s Hearing and Zoning Hearing for at least 20 working days prior to the hearing, in order to notify all interested citizens of the date and location of the hearing. A letter dated September 30, 2009 was also sent to nearby property owners and community groups, notifying them of the hearing.

Pursuant to Sections 32-4-227 and 32-4-228 of the B.C.C., 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. Upon inquiry of the Developer’s attorney, Mr. Scherr, he indicated it was his understanding that all agency comments had been addressed on the Third Amended Development Plan. Mr. Scherr also reiterated that related zoning requests for special hearing, special exception and variance relief had been filed pertaining to portions of the proposed development as well as existing conditions. Mr. Scherr indicated the reasons and support for

these requests would be expounded on during Mr. Rosenfelt's presentation of the development plan.

I then asked the particular agencies to state whether they had any outstanding issues. I have summarized their responses below:

Recreation and Parks: Bruce Gill appeared on behalf of the Department of Recreation and Parks and indicated that the all of the planned residential units for this project are in the future PUD. As a result, there are no open space requirements at this juncture for the development plan and, hence, no outstanding issues. Mr. Gill's department thus recommended approval of the Third Amended Development Plan.

Planning Office: Lloyd Moxley appeared on behalf of the Office of Planning. Mr. Moxley indicated that his department had no outstanding issues with the development plan. He explained that because the proposed development includes senior housing, it generally does not generate additional capacity, so no School Impact Analysis was required. He also indicated no pattern book was necessary at this stage merely for the creation of Lot 4 for the proposed PUD. This type of review would occur during the PUD process. He also noted that the PUD was to be introduced on November 5, 2009 before the Planning Board and presented for a public hearing before the Board on November 19, 2009. Hence, Mr. Moxley indicated his agency recommended approval of the Third Amended Development Plan.

Development Plans Review (Public Works): Dennis Kennedy appeared on behalf of the Bureau of Development Plans Review. Mr. Kennedy confirmed that the Developer's plan met all of his department's requirements and comments, and that his department recommended approval of the Third Amended Development Plan.

Department of Environmental Protection and Resource Management (DEPRM): David Lykens appeared on behalf of DEPRM. Mr. Lykens confirmed that the Developer's plan met all

of his department's requirements and comments, and that his department recommended approval of the Third Amended Development Plan.

Office of Zoning Review: Jeffrey Perlow appeared on behalf of the Zoning Review Office. Mr. Perlow indicated that there were still some minor notes and details needed for the plan, as well as favorable consideration of the related zoning Petitions. If these notes and details were resolved and the zoning Petitions granted, he indicated his Department would recommend approval of the Third Amended Development Plan.

Land Acquisition: Brad Knatz appeared on behalf of the Bureau of Land Acquisition. Mr. Knatz indicated that there was no land dedication associated with this plan so there were no outstanding issues from his agency and recommends approval of the Third Amended Development Plan.

Because the Developer has combined the hearings on the proposed development and the zoning matters in one Hearing Officer's Hearing pursuant to Section 32-4-230 of the B.C.C., the Developer called on Mr. Rosenfelt to testify all at once -- in support of the zoning requests as well as to present the Development Plan. Mr. Rosenfelt confirmed his familiarity with the laws and regulations pertaining to residential and commercial development, particularly in Baltimore County. As Mr. Rosenfelt explained, he was directly involved in the evaluation and preparation of the development plan for this project, and he prepared the Third Amended Development Plan marked and accepted into evidence as Developer's Exhibit 1, which included information pertaining to the zoning Petitions. Mr. Rosenfelt was offered and accepted as an expert in the areas of planning, zoning, land use, development, and the necessary zoning and land use requirements in Baltimore County.

Mr. Rosenfelt explained that the Developer desires to create Lots 4 and 5 for the proposed elderly housing facility and for the existing cemetery, respectively. This would

essentially complete the development of the original 24.551 acre site that is currently home to the Mt. Olive United Methodist Church and the two elderly housing facilities known as Randallstown Nonprofit Housing Corporation and Randallstown II Nonprofit Housing Corporation. As shown on the plan, Lot 4 would be created near the northern corner of the tract for the proposed Planned Unit Development to be considered by the Planning Board, with an area of approximately 2.69 acres. An irregular-shaped area at the southern corner of the tract would create Lot 5 for the existing cemetery and would consist of approximately 6.09 acres.

The Developer has also requested certain zoning relief. The special hearing is requested to approve the amendment to the previously approved plans. It is also to approve a reduction in acreage on Lot 3 (the strip between proposed Lot 4) and to take this area out of the prior density calculation for Lot 3 and transferring it to proposed Lot 4 in order to increase its density. This strip will also contain parking for Lot 4.

The variance request is essentially for storm water management purposes. For the underground pipes that would be situated along the right side of Lot 4 and into Lot 3, the Developer would need to reduce the Residential Transition Area (RTA) and buffers. Mr. Rosenfelt noted that the storm water management facility would be underground and would deal with runoff and would preserve two large, mature trees. A storm water management pond would be underground and not visible. He also noted that the unique features of the property driving the need for the variance were that the property is already improved with the existing church and elderly housing facilities and that it is very irregularly shaped.

As to the special exception request, Mr. Rosenfelt indicated that the Developer requests approval for the existing cemetery use. The Developer desires to subdivide Lot 1 where the church is located and create Lot 5 as a separate lot for the cemetery. This would aid the church for maintenance purposes and would also ensure that the cemetery would remain intact even if it

were no longer affiliated with the church. In support of this request, Mr. Rosenfelt offered his expert opinion that this request would not be detrimental to the health, safety, or general welfare of the locale, and would have no detrimental effects on the other special exception criteria set forth in Section 502.1 of the B.C.Z.R.

Following his presentation of the plan and explanations regarding the requested zoning relief, Mr. Rosenfelt indicated that based on his professional knowledge and experience, the Third Amended Development Plan marked and accepted into evidence as Developer's Exhibit 1 fully complies with the development regulations contained in the Baltimore County Code and all applicable policies, rules, and regulations. As Mr. Rosenfelt confirmed, the Third Amended Development Plan had been presented to each of the County agency representatives and each agency likewise confirmed that all issues were addressed and resolved on the redlined plan.

Following the hearing, the undersigned received a transmittal dated November 2, 2009 and a copy of the Third Amended Development Plan from Jeffrey Perlow with the Zoning Review Office. The plan contained redlined comments for the Developer that referenced Mr. Perlow's testimony regarding the "notes and details" that were still needed on the plan. A copy of the plan with Mr. Perlow's comments shall be marked and accepted into evidence as Baltimore County Exhibit 1. Shortly thereafter, the undersigned was contacted by Judith Floam with Colbert, Matz, Rosenfelt, Inc. concerning Mr. Perlow's redlined comments. Ms. Floam indicated the notes and additional details requested by Mr. Perlow would be forthcoming on a revised plan. On November 6, 2009, the undersigned received a transmittal from Ms. Floam accompanied by a revised Third Amended Development Plan dated November 4, 2009 which incorporated Mr. Perlow's comments. This revised plan shall be marked and accepted into evidence as Developer's Exhibit 5.

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*, Section 32-4-229 of the B.C.C. 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 development plan satisfies those agencies’ requirements, I find that the revised Third Amended Development Plan, marked and accepted into evidence as Developer’s Exhibit 5, is in compliance with the Baltimore County Code and all applicable policies, rules, and regulations.

In addition, I am persuaded to grant the requested special hearing, variance, and special exception requests. The requested special hearing will merely permit an amendment to the prior site plans and Order’s pertaining to this property so as to incorporate the changes permitted herein. It will also reduce the acreage of the prior special exception to account for the removal of the in-fee access strip between Lot 4. As to the variance request, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request, and also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon the Developer.

I also find that the variance requests can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. Thus, I find that these variance requests can be granted as to meet the requirements of Section 307 of the B.C.Z.R. Finally, as to the special exception, I am persuaded to grant this relief as well. Section 1B02.1 of the B.C.Z.R. permits cemeteries in the D.R.5.5 Zone by special exception. After considering Mr. Rosenfelt’s uncontroverted expert testimony, I find that the requested relief meets the standards set forth in Section 502.1 of the B.C.Z.R. and should be granted.

Therefore, having identified no remaining unresolved or outstanding issues that would prevent development plan approval, the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the revised Third Amended Development Plan.

Pursuant to the advertisement, posting of the property, and public hearing held thereon, the requirements of which are contained in Article 32, Title 4, of the Baltimore County Code, the revised Third Amended Development Plan for Randallstown III Nonprofit Housing Corporation, accepted into evidence as Developer's Exhibit 5, shall be approved consistent with the comments contained herein, and the requested special hearing, variance, and special exception relief shall be granted.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County, this 18th day of November, 2009, that the revised "THIRD AMENDED DEVELOPMENT PLAN" for Randallstown III Nonprofit Housing Corporation, marked and accepted into evidence as Developer's Exhibit 5, be and is hereby APPROVED.

IT IS FURTHER ORDERED by this Deputy Zoning Commissioner that the Special Hearing relief requested as follows:

- To approve an amendment to the approved site plans in zoning Case No. 06-019-SPHX and Case No. 01-178-X; and
- To reduce the acreage of the Special Exception approved in Case Nos. 01-178-X and 06-019-SPHX from 6.44 acres to 6.25 acres by removing the in-fee access strip and therefore to approve a minor density calculation change from the approved 9.01 density units per acre on Lot 3 to 9.16 density units per acre, be and are hereby GRANTED; and

IT IS FURTHER ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County that the Variance request as follows:

- From Section 1B01.1.B.1.e(5) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a Residential Transition Area setback of 45 feet in lieu of 75 feet required; and
- From Section 1B01.1.B.1.e(3) of the B.C.Z.R to permit a Residential Transition Area buffer of 0 feet in lieu of 50 feet required for the portion of a storm water management structure on Lot 3, be and are hereby GRANTED; and

IT IS FURTHER ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County that the request for Special Exception to permit a cemetery in a D.R.5.5 Zone in accordance with Section 1B02.1 of the B.C.Z.R. be and is hereby GRANTED.

The relief granted herein is subject to the following:

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

____SIGNED_____
THOMAS H. BOSTWICK
Hearing Officer/Deputy Zoning Commissioner
for Baltimore County

THB:pz