

**IN RE: DEVELOPMENT PLAN HEARING &
& PETITION FOR VARIANCE**

N side of Piney Hill Road, E of Hereford
Road, W of Piney Creek Court
(1126 Piney Hill Road)
7th Election District
3rd Councilmanic District
(Eagan Property Resubdivision of Lot 3)

Michael Eagan
Applicant/Developer

* BEFORE THE
* HEARING OFFICER
* FOR
* BALTIMORE COUNTY
* **HOH Case No. 07-152**
* **Zoning Case No. 2011-0048-A**
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**HEARING OFFICER’S COMBINED ZONING RELIEF AND
DEVELOPMENT PLAN OPINION 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.”), and a related zoning Petition for Variance. Michael Eagan, the developer of the subject property (hereinafter “the Developer”), submitted for approval a redlined Development Plan prepared by Gerhold, Cross & Etzel, Ltd. known as the “Eagan Property Resubdivision of Lot 3” and “Plat to Accompany Petition for Zoning Variances” (hereinafter referred to as the “redlined Development Plan” for property located at 1126 Piney Hill Road. The Developer proposes further development of the existing Lot 3, which stems from the previous Eagan Property Minor Subdivision, PDM #94084, to create an additional lot, Lot 4, on a total of 11.5 acres, more or less, of predominately R.C.4 zoned property, with a smaller area zoned R.C.7. The subject site is currently improved with a single-family detached dwelling as well as a detached three car garage. The proposed development is more particularly described on the redlined Development Plan with a revision date of December 8, 2010 that was marked and

accepted into evidence as Developer's Exhibit 1.

In addition to seeking approval of the aforementioned Development Plan, the Developer is also requesting Variance relief from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an existing accessory structure (detached garage) to be in the front yard in lieu of the required rear yard, and to permit an existing accessory structure (detached garage) with a height of 24 feet in lieu of the maximum permitted 15 feet, respectively.

The property was posted with the Notice of Hearing Officer's Hearing on November 16, 2010 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing. In addition, notice of the zoning hearing was timely posted on the property on November 16, 2010 and was timely published in *The Jeffersonian* in accordance with the County Code.

Pursuant to the development review and approval process, a concept plan of the proposed development was prepared and a Concept Plan Conference ("CPC") was held on October 13, 2009 at 11:00 AM in the County Office Building. As the name suggests, the concept plan is a schematic representation of the proposed development and was initially reviewed by representatives of the Developer and the reviewing County Agencies at the CPC. Thereafter, as was also required in the development review process, notice of a Community Input Meeting ("CIM") was posted and scheduled during evening hours at a location near the proposed development. The CIM would provide residents of the area an opportunity to review and comment firsthand on the Concept Plan. In this case, the CIM was held on December 8, 2009 at 7:00 PM at the County Office Building, Room 106, 111 West Chesapeake Avenue, Towson, Maryland, where representatives of the Developer and the County attended, as well as a number of interested persons from the community. Subsequently, a Development Plan was prepared

based upon the comments received at the CPC and the CIM, and the Development Plan was submitted for further review at a Development Plan Conference (“DPC”). At the DPC, the Developer’s consultants and County agency representatives further reviewed and scrutinized the plan. The DPC occurred on November 17, 2010 at 10:00 AM. Thereafter, the instant Hearing Officer’s Hearing was held to consider this proposal on December 17, 2010 in Room 106 of the County Office Building located at 111 West Chesapeake Avenue in Towson.

Appearing at the requisite public hearing in support of Development Plan approval and the related request for zoning relief was the Developer and legal owner of the property, Michael Eagan. Also appearing was Scott Lindgren with Gerhold, Cross & Etzel, Ltd., the land surveyor who prepared the redlined Development Plan. There were no Protestants or other interested citizens in attendance; however, a letter was received on December 16, 2010 from adjacent property owners Avi Shaked and Babs Waldman expressing opposition to another subdivision of the Eagan property, following a previous minor subdivision. This letter was marked and accepted into evidence as Protestant’s Exhibit 1.

Numerous representatives of the various Baltimore County agencies who reviewed the redlined Development Plan and zoning Petition also attended the hearing, including the following individuals from the Department of Permits and Development Management: Colleen Kelly (Project Manager), Michael Viscarra (Development Plans Review), Joe Merrey (Office of Zoning Review), and Gigi Hampshire (Bureau of Land Acquisition). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Resource Management (“DEPRM”); and Lloyd Moxley from the Office of Planning. 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. Specifically, Lt. Jimmie Mezick with the Office of the Fire Marshal submitted an email dated December 10, 2010 that was marked and accepted into evidence as Baltimore County Exhibit 3, which stated that his office had agreed to the proposed turn-around shown on the redlined Development Plan and had no other issues with the Plan.

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 areas of concern and expertise. The agencies specifically comment on whether the plan complies with all applicable Federal, State, and/or County laws, policies, rules and regulations pertaining to development and related issues. In addition, these agencies carry out this role throughout the entire development plan review 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.

Testimony and evidence received in the case revealed that the subject property is located at the northwest side of Piney Hill Road, east of York Road and Hereford Road, in the Monkton area of Baltimore County. As shown on the "Devolution of Title" detail on the redlined Development Plan, the property was originally part of a larger tract containing approximately 56.15 acres known as the "Vance Property" and held intact since 1937. A portion of the Vance Property known as Tract 2 containing approximately 27.495 acres has been held intact since 1982. In 1994, Tract 2 was subdivided by Mr. and Mrs. Eagan into three lots as part of a minor subdivision. Lot 1 contained 8.331 acres, Lot 2 contained 7.595 acres, and Lot 3, which was

retained by the Eagans, contained 11.450 acres. Access to the three lots was via a use-in-common access easement from Piney Hill Road. The Developer looked into a re-subdivision of Lot 3 in 1999, however the property was downzoned during the 2000 Comprehensive Zoning Map Process (“CZMP”). Thereafter, the property was rezoned once more during the 2008 CZMP to its present R.C.4 zoning, as well as R.C.7.

The current proposal is to re-subdivide Lot 3 (the “subject property”) into two lots, namely Lot 3 (5.768 acres) and Lot 4 (5.682 acres), utilizing the remaining density. The existing 15 foot wide use-in-common access easement will remain for ingress/egress to and from Lot 3 and proposed Lot 4, with a proposed 30 foot by 70 foot T-turnaround where the driveways for the two lots meet, as depicted on the redlined Development Plan. The existing 2½-story stone and brick dwelling and detached three car garage on Lot 3, known as 1126 Piney Hill Road where the Developers reside, will remain and a new dwelling will be built on Lot 4 that will meet all area and setback requirements. In order to legitimize the three car garage and to meet zoning requirements, variance relief is needed for the location of the structure in the front yard and its height of 24 feet.

Section 32-4-228 of the Baltimore County Code (B.C.C.) sets forth the standards by which the Hearing Officer must follow when considering a development plan. At the public hearing, the Hearing Officer is required to determine what, if any, open issues or agency comments remain unresolved. Testimony and evidence received was that all issues raised within the comments submitted by the various County reviewing agencies had been resolved and incorporated within the redlined Development Plan, and that the Plan complies with all County regulations. This included a request for a fee in lieu of open space requirements, which was granted pursuant to the letter from the Department of Recreation and Parks dated November 22,

2010 that was marked and accepted into evidence as Baltimore County Exhibit 1. A School Impact Analysis was prepared by the Developer's consultants and corroborated by the Planning Office, showing capacity at the Sparks Elementary School as above the 115% threshold (*See*, Baltimore County Exhibit 2); however, Mr. Moxley with the Planning Office indicated there was sufficient adjacent capacity in the District for the one additional student generated by this development. He also indicated no objection to the requested variances so long as the garage would not be used for commercial purposes or used as living quarters. There being no open issues or concerns raised by the Developer or any County agency representatives, it was not necessary to take any testimony but a brief presentation of the Plan was provided by Mr. Lindgren as the land use consultant with the firm of Gerhold, Cross & Etzel. Ltd.

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 Developer has satisfied its burden of proof and, therefore, is entitled to approval of the redlined Development Plan.

The Developer has also requested certain zoning relief. Zoning relief is typically sought to modify development and Zoning Regulations as well as uses. The variance, as previously indicated, is requested to permit an existing accessory structure (detached garage) to be in the front yard in lieu of the required rear yard, and with a height of 24 feet in lieu of the maximum permitted 15 feet. To this request, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. Clearly, this is a

unique site, with its irregular shape, with significant grades and slopes associated with the property, and it is very wooded and vegetated. I also find that strict compliance with the Zoning Regulations would create a practical difficulty and unreasonable hardship upon the Developer that would result in a denial of a reasonable and beneficial use of the property. Finally, I find that the variance requests can be granted in strict harmony with the spirit and intent of Section 307.1 of the B.C.Z.R., and in such a manner as to grant relief without injury to the public health, safety and general welfare.

Lastly, it should be noted that my decision with regard to the Petition for Variance and the Hearing Officer's Hearing considering the proposed development are treated differently for appeal purposes. The decision as to the zoning Petition is made by me sitting as Deputy Zoning Commissioner. An appeal from this decision is a *de novo* appeal to the Board of Appeals of Baltimore County. The decision as to approval of the redlined Development Plan is made by me sitting as Hearing Officer for Baltimore County. An appeal from that decision is on the record to the Board of Appeals pursuant to Section 32-4-281 of the B.C.C. Both appeals must be filed within 30 days from the date of this Order.

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 "Eagan Property Resubdivision of Lot 3" redlined Development Plan shall be approved consistent with the comments contained herein. In addition, the requested variance relief shall be granted.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County, this 20th day of December, 2010, that the "EAGAN PROPERTY RESUBDIVISION OF LOT 3" redlined Development Plan that was marked and accepted into

evidence as Developer's Exhibit 1, be and is hereby **APPROVED**; and

IT IS FURTHER ORDERED by this Deputy Zoning Commissioner that the Variance requests from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an existing accessory structure (detached garage) to be in the front yard in lieu of the required rear yard, and to permit an existing accessory structure (detached garage) with a height of 24 feet in lieu of the maximum permitted 15 feet be and is hereby **GRANTED**.

The aforementioned approval and relief granted herein shall be subject to the following as conditions precedent:

1. Any appeal of this decision must be taken within thirty (30) days from the date of this Order and are subject to the appeal provisions contained in the Baltimore County Zoning Regulations and Section 32-4-281 of the Baltimore County Code. If an appeal of this decision is not taken within the time prescribed, then this decision shall constitute a final Order as to the Zoning relief requested and a final Development Plan Order as to the Hearing Officer's Hearing.
2. The subject accessory structure (detached garage) shall not be used for commercial purposes and shall not contain any living quarters or be used as a residence.

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

THB:pz