

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
AND PETITIONS FOR SPECIAL	*	OFFICE OF
HEARING & VARIANCE	*	ADMINISTRATIVE HEARINGS
N side of Old Court Road, 636' N of	*	
Peach Tree Court	*	
3 rd Election District	*	
2 nd Council District	*	FOR
(Paige Property at Roslyn Station)	*	BALTIMORE COUNTY
Dr. David M. Paige and Nancy E. Paige	*	
Esperanza Court, LLC	*	HOH Case No. 03-291 and
Developers	*	Zoning Case No. 2012-0304-SPHA

* * * * *

**ADMINISTRATIVE LAW JUDGE’S COMBINED ZONING AND
DEVELOPMENT PLAN OPINION & ORDER**

This matter comes before the Office of Administrative Hearings 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.”). The hearing also involved requests for special hearing and variance relief under the Baltimore County Zoning Regulations (B.C.Z.R.). Dr. David M. Paige & Nancy E. Paige, the developers of the subject property (hereinafter “the Developers”), submitted for approval a redlined Development Plan prepared by DS Thaler & Associates, Inc., known as “Paige Property at Roslyn Station.”

In the instant matter, the Developers propose to develop 16 housing units (3 single-family detached, 3 standard townhouses and 10 front-entry garage townhouses) on 4.78 acres of land zoned DR 2 (0.07 acres) and DR 5.5 (4.71 acres). The site is currently improved with one single-family dwelling and four lots shown as undeveloped. The site was previously approved as the Paige Property (Roslyn Station), under the CRG process. The present submission would

constitute the final section of this subdivision, and involves the 4th Amended Development Plan for this project.

In addition to the Hearing Officer's Hearing, the Developers are requesting certain zoning relief and have filed a Special Hearing request pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

- To permit the existing dwelling to remain in conjunction with the recordation of the plat indicating the new lines of division for proposed Lots 11-16;
- For an amendment to the 3rd Amended Final Development Plan entitled Paige Property; and
- For such other and further relief as may be deemed necessary by the Administrative Law Judge.

The Developers are also requesting Variance relief from the B.C.Z.R. as follows:

- § 1B01.2.C.1.C and Division II, Section A of the CMDP (See B.C.Z.R. §§ 504.1 and 504.2) to allow a building face setback from the tract boundary of 15' in lieu of the minimum building face setback from a tract boundary of 30' for Lot 11;
- § 301.1A of the B.C.Z.R. and/or Division II, Section A of the CDMP (See B.C.Z.R. §§ 301.1.B, 504.1 and 504.2) to allow porches 20' from the property line in lieu of the permitted 22.5' (the minimum required rear yards for the single-family attached units are 30' and the regulations only permit porches to extend into the rear yard 25% of the minimum required

- § 303.1 of the B.C.Z.R. to allow a front yard depth of a building to the right-of-way of 25' in lieu of the average front yard depth of 37.5' (the average of the lots immediately adjoining within 200') for Lots 1-16, and
- For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Details of the proposed development and the requested zoning relief are more fully depicted on the two-sheet redlined 4th Amended Development Plan that was marked and accepted into evidence as Developers' Exhibit 3A.

The property was posted with the Notice of Hearing Officer's Hearing and Zoning Notice on July 12, 2012 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing.

Appearing at the requisite Hearing Officer's Hearing in support of the Development Plan on behalf of the Developers and property owners were Dr. David M. and Mrs. Nancy E. Paige, Stacey A. McArthur, Brian Childress, David Thaler and Victoria Ballestero, all with DS Thaler & Associates, Inc., the consulting firm that prepared the site plan, Mickey Cornelius with the Traffic Group, Inc., and Sherry Gillespie with Smith, Gildea & Schmidt, LLC. Lawrence E. Schmidt, Esquire with Smith, Gildea & Schmidt, LLC, appeared and represented the Developers. Also appearing as interested citizens were Amanda Brown, Howard J. Needle, Nancy M. Mandell, Arnold Simon, Darryl W. and Janeen McLean, Linda P. Halpert, Lori A. and Kenneth Harvin, Edward A. King, Bradley P. Barthlow, Ross N. and Dianna Rogers Ford, Barisua Ikpe, and

Margaret Jefferson.

Numerous representatives of the various Baltimore County agencies, who reviewed the Development Plan, also attended the hearing, including the following individuals from the Department of Permits and Development Management: Darryl Putty (Project Manager), Bruce Gill and Vishnu Desai (Development Plans Review [DPR]), LaChelle Imwiko, Real Estate Compliance, and Aaron Tsui (Office of Zoning Review). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (DEPS), and Jenifer Nugent from the Department 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.

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.

Pursuant to §§ 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. The only unresolved issue with respect to the development plan concerned

the necessity of a second means of access to the Roslyn Station community. The Bureau of Development Plans Review (DPR), in comments dated August 7, 2012 and August 9, 2012, required the Developer to dedicate to the County a strip of land with roadway that would connect Woodling Way with Trentham Drive. Several members of the community spoke on this issue, which will be discussed in greater detail below.

Other than the roadway issue noted above, each of the Baltimore County agency representatives identified above indicated that the redlined Development Plan (marked as Developers' Exhibit 3A) addressed any and all comments submitted by their agency, and they each recommended approval of the plan.

Stacey A. McArthur, a registered landscape architect, presented the Developer's case. Ms. McArthur noted that the redlined notations on the Plan addressed each of the comments submitted at the DPC by County representatives. In conclusion, Ms. McArthur testified that in her opinion, the plan (Developers' Exhibit 3A) complied with all applicable provisions of the B.C.C. and development regulations.

COMMUNITY CONCERNS

Several members of the community spoke at the hearing and identified concerns with the project. The primary concern was with Woodling Way being opened (it is now a dead-end road) to service the 15 homes being built on the Paige property. Another concern, obviously related to the first, was with the overall traffic in the vicinity, especially the unsafe conditions at Woodling Way and Old Court Road, as detailed by Mr. Simon. *See* Protestants' Exhibit 1.

With regard to the first issue, every resident who testified was adamantly opposed to any additional traffic on Woodling Way. But Jennifer Nugent, from the Department of Planning, testified that County policy and Master Plan 2020 both dictated that Woodling Way be opened to

provide connectivity and access to the 16 new homes. At the hearing, Developers' counsel presented various options regarding the roadway issue, but I believe I am obliged to accept the recommendation of the Department of Planning, given that in development plan cases such as this, the Master Plan is binding, and requires that connectivity be provided on Woodling Way for the 16 new homes.

Woodling Way will not be open to the emergency access road to be provided via Trentham Drive. This new road will be constructed to provide a second means of access to the Roslyn Station community, which now relies upon Woodholme Avenue as the sole means of access. Under current Baltimore County regulations, a second means of access to a development must be provided when there are more than 150 dwellings served, and in this community there are 154 homes. The emergency access roadway will be gated at both ends, will not be constructed to Baltimore County standards (i.e., it will be only a 20' wide corridor with 16' of paving width, as detailed on the overlay marked as Developers' Exhibit 3B) and if the roadway were ever to be opened, it would require that it be improved to County standards, which seems unlikely in this era of municipal budget tightening. Finally, the County Code requires notice and a hearing before a roadway can be opened, and the County is expressly subject to this procedure. B.C.C. § 18-3-302(f). As such, if this were ever proposed, the nearby residents would receive notice and be entitled to testify at a hearing on the issue.

The other significant concern identified by community residents concerned the potential increase in traffic, as well as the dangerous conditions already existing at Woodling Way and Old Court Road. While I certainly do not take these concerns lightly, the evidence in the record establishes that the proposed 16 homes will not cause area roadways to become overburdened.

The Developers presented testimony from Mickey Cornelius, of the Traffic Group, who

was accepted as an expert in traffic engineering. Mr. Cornelius testified he performed “delay studies” at the intersections of Old Court Road and Woodholme Avenue (Developers’ Exhibit 9A) and Woodling Way and Old Court (Developers’ Exhibit 9B). Both of these intersections are regulated by stop signs, and are not signalized. Mr. Cornelius testified to the average and maximum delay times to navigate these intersections, and opined that a signalized intersection was not required, and that federal standards for signalization had not been met. Mr. Cornelius further opined that both intersections were acceptable and met applicable standards, and that neither intersection required any further improvements or enhancements. Finally, Mr. Cornelius opined that the addition of the proposed 16 homes would not cause traffic conditions to deteriorate in any material respect.

The residents who testified all took issue with Mr. Cornelius’ testimony, and each described lengthy delays they had to endure at these intersections. While I am mindful of and credit their testimony, Maryland law provides that lay witness testimony about traffic congestion and delays will not successfully rebut the testimony of an expert to the effect that the roadway is capable of absorbing the increased traffic volume generated by the development proposal. *Anderson v. Sawyer*, 23 Md. App. 612, 618-19 (1974).

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.” B.C.C. § 32-4-229. After due consideration of the testimony and evidence presented by the Developers, 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 4th Amended Redlined Development Plan.

ZONING REQUESTS

VARIANCES

In addition to the Development Plan approval, the Developers sought variances under the B.C.Z.R. for certain setbacks and for porches/decks to be constructed on the dwellings. Each of the variance requests was described in detail earlier in this Opinion.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test. The property at issue is undoubtedly unique, a finding made in an earlier case by the prior Zoning Commissioner. See, Developers' Exhibit 6 (Case No. 07-264-SPHA).

In addition, the Developers would suffer a practical difficulty if the variances were denied, in that they would need to re-engineer the Development Plan to comply with the setbacks, and potential purchasers of the homes would be unable to enjoy decks in the rear of their homes, an amenity enjoyed by other homes in the community. In light of the modest nature of the relief requested, and the fact that there will be no negative impact upon the surrounding community, the variances will be granted.

SPECIAL HEARING

The request for special hearing relief is not so clear cut. The Developers seek to allow the existing single-family dwelling to remain (along with the oil tank, well and septic system used by the Paiges) while permitting the recordation of an amended record plat. Mr. Livingston indicated

that the Department of Environmental Protection and Sustainability (DEPS) [Ground Water Management] was opposed to the request, although that agency was willing to continue discussing options with the Developers' engineers.

David Thaler, one of Developers' engineers, testified that he was familiar with other cases wherein the applicant was permitted to record a plat with proposed new development, while still residing in a single-family dwelling with a well and septic system that eventually needed to be abandoned. Mr. Thaler indicated that the County could put a note to this effect on the record plat, and could also deny issuance of any building permits until the systems were properly abandoned.

I tend to agree with counsel that this really is just a question of timing, and it only makes sense that the Paiges be allowed to continue living in the dwelling until such time that construction is actually begun on this project. I will impose certain conditions in the Order to address the concerns raised by Mr. Livingston, but will otherwise grant the special hearing relief.

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 Paige Property at Roslyn Station 4th Amended Development Plan shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 28th day of August, 2012, that the redlined "**PAIGE PROPERTY AT ROSLYN STATION**" Development Plan, marked and accepted into evidence as Developers' Exhibit 3A, be and is hereby **APPROVED**.

IT IS FURTHER ORDERED that the Special Hearing request pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

- To permit the existing dwelling to remain in conjunction with the recordation of the

- For an amendment to the 3rd Amended Final Development Plan entitled Paige Property,

be and is hereby GRANTED.

IT IS ALSO FURTHER ORDERED that the Variance request pursuant to the B.C.Z.R. as follows:

- § 1B01.2.C.1.C and Division II, Section A of the CMDP (See B.C.Z.R. §§ 504.1 and 504.2) to allow a building face setback from the tract boundary of 15' in lieu of the minimum building face setback from a tract boundary of 30' for Lot 11,
- § 301.1A of the B.C.Z.R. and/or Division II, Section A of the CDMP (See B.C.Z.R. §§ 301.1.B, 504.1 and 504.2) to allow porches 20' from the property line in lieu of the permitted 22.5' (the minimum required rear yards for the single-family attached units are 30' and the regulations only permit porches to extend into the rear yard 25% of the minimum required depth, so 25% of 30' is 7.5' leaving a permitted setback from the property line of 22.5' without variance relief), and
- § 303.1 of the B.C.Z.R. to allow a front yard depth of a building to the right-of-way of 25' in lieu of the average front yard depth of 37.5' (the average of the lots immediately adjoining within 200') for Lots 1-16,

be and is hereby GRANTED.

The Development Plan and zoning approvals herein are expressly subject to and conditioned upon the following:

1. Developers conveyance to Baltimore County of a 20' wide access easement, connecting Woodling Way with Trentham Drive, as shown on the cellophane overlay marked as Developers' Exhibit 3B, to be improved (at Developers' expense) with a 16' wide macadam surface.
2. This roadway shall be for emergency access only, and shall be gated on both ends at Woodling Way and Trentham Drive. The gates shall be equipped with knox-box mechanisms, which can be accessed by emergency responders.
3. No permits for grading and/or construction of the dwellings shown on the 4th Amended Development Plan (Exhibit 3A) shall be issued until the Developers have abandoned, to the satisfaction of the Department of Environmental Protection and Sustainability (DEPS), the oil tank, well and septic system associated with the single-family dwelling on site.
4. The Final Development Plan (FDP) and record plat recorded among the land records shall also contain a conspicuous notation that permits shall not be issued for grading and/or construction until the oil tank, well and septic system are property abandoned, as set forth in condition #3 above.
5. The Developers shall, at their own cost and within 45 days of the date of this Order, obtain and provide to Department of Environmental Protection and Sustainability (DEPS) a field survey prepared by a licensed surveyor,

Any appeal of this Order shall be taken in accordance with Baltimore County Code,
§ 32-4-281.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw