

<b>IN RE: DEVELOPMENT PLAN HEARING</b>	*	BEFORE THE OFFICE
NE side of Rushley Road,		
E of Littlewood Road	*	OF ADMINISTRATIVE
5 <sup>th</sup> Councilmanic District		
9 <sup>th</sup> Election District	*	HEARINGS FOR
<b>(1907 Rushley Road)</b>		
Cromwell Ridge aka Rushley Road	*	BALTIMORE COUNTY
Craftsman Developers	*	<b>HOH Case No. 09-829</b>
<i>Applicant/Developer</i>		

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

This matter comes before the Office of Administrative Hearings for a hearing pursuant to Section 32-4-227 of the Baltimore County Code (B.C.C.). In accordance with the Development Regulations codified in Article 32, Title 4, of the B.C.C., the Applicant/Developer seeks approval of a Development Plan prepared by D.S. Thaler & Associates, Inc., for a 34 lot residential subdivision on 14.60± acres, more or less, zoned DR 2, DR 3.5 and DR 5.5. The proposed subdivision is more particularly described on the redlined Development Plan submitted into evidence and marked as Developer's Exhibit 1.

As to the history of this project through the development review process, a concept Plan was prepared (Dev. Ex. 6) and a Concept Plan Conference (CPC) was held on May 10, 2011 in the County Office Building. The concept plan is a schematic representation of the proposed subdivision and is reviewed at the conference by the various Baltimore County agencies charged with responsibility over certain aspects of the development proposal. Thereafter, as is also required in the Development Review Process, a Community Input Meeting (CIM) is posted and 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 June 18, 2011, at the Towson Public Library, where representatives of the Developer and County attended, as well as interested persons residing in the community. Subsequently, a Development Plan was prepared in accordance with

B.C.C. Section 32-4-221, *et seq.* based upon the comments received at the CPC and CIM; and submitted for further review and approval, at a Development Plan Conference (DPC) held on January 18, 2012.

It should be noted at this juncture that the role of each reviewing County agency in the development review and approval process is to independently and thoroughly review the Development Plan as it pertains to their specific area of concern and expertise. As with the CPC, at the DPC, the agencies submit written comments regarding the subject Development Plan and make determinations where necessary as to whether the Plan complies with applicable Federal, State and/or County laws and regulations governing land development in Baltimore County (Dev. Ex. 9). Thereafter, the Developer may revise the Development Plan to address the DPC comments.

The Plan is then presented at a Hearing Officer's Hearing before the Administrative Law Judge sitting as Hearing Officer. In this case, the hearings were held on February 9, February 10, March 8, March 9, March 12, March 13, April 5, April 19, May 10, and May 11, 2012.

Appearing at the Hearing Officer's Hearing on behalf of Developer were John B. Gontrum, Esquire of Whiteford, Taylor & Preston LLP, who entered his appearance as counsel for the Developer; David S. Thaler, Professional Engineer, and Stacey A. McArthur, Registered Landscape Architect, both with D.S. Thaler & Associates, Inc. Appearing in opposition to the request was J. Carroll Holzer, Esquire, representing the Cromwood Coventry Community Association, Inc., and the following individuals: Michael and Niloupar Beegan, David and Anne Marie Anderson, Leonard and Carol Monfredo, Anne Collier, Sharon Opdyke, John Scott, Charles Gross and Richard Funk. Appearing in opposition to the Petitioner's request were residents of the surrounding communities and also representatives of the surrounding community associations. These individuals are too numerous to mention to

specifically identify herein. However, all have signed in on the Citizen and Protestant Sign-In Sheets. Reference is made to the sign-in sheets which are contained within the Hearing Officer's file.

As the ten (10) hearing days reflect, this proposed development was very ardently contested by the Protestants. Various members of the community in which the development is proposed went to extraordinary efforts to contact county and state agencies with concerns about the proposed development and its impact on their neighborhood. At the hearing the Protestants offered sixty (60) exhibits including video tapes, photos and renderings to illustrate the tranquility of the current community and the changes wrought by the proposal. The Developer offered thirty-three (33) exhibits.

In this case subsequent to the hearing, the parties had numerous discussions extending over several months, and an Agreement was reached, which Agreement is by consent attached hereto and made a part of this Order. Notwithstanding the Agreement, however, there are development standards to be followed and findings which the Hearing Officer must make, and these findings are independent of the Agreement. That is, regardless of whether the parties have forged an Agreement, the Baltimore County Code mandates a development must meet certain standards and that certain criteria must be met before variances are granted.

B.C.C. Section 32-4-228 sets forth the standards the Hearing Officer must follow when reviewing a development plan. As outlined in B.C.C. Section 32-4-229, the Hearing Officer must approve plans that comply with the development regulations and applicable policies, rules, and regulations. At the public hearing on the Plan, the Hearing Officer must determine what, if any, open issues or agency comments remaining unresolved. Testimony and evidence is then taken on those unresolved issues.

On the first day of the public hearings the Developer submitted a red-lined Development Plan intending thereby to address in red-lined amendments County agency

comments on the previously submitted Development Plan. The County agency representatives had the opportunity to review the red-lined plan prior to the commencement of the hearing, and their comments at the hearing were made in reference to the changes made on the red-lined Development Plan (Dev. Ex. 1).

In this case, the reviewing agencies indicated that all issues contained in their Development Plan Comments (Dev. Ex. 9) had been resolved, and the redlined Development Plan incorporated all required changes. Every County agency representative appearing also testified that the red-lined plan met their agency's requirements and that their agency had no open issues. Darryl Putty, the Project's Manager with the Department of Permits, Approvals and Inspections (PIA), noted his Department's approval of the Development Plan; Aaron Tsui, representative of the Office of Zoning Review, offered that he had reviewed the proposed development plan for the 34 units on the property under the zoning regulations and that his office had no open issues with the development. He stated that his office recommended approval of the plan; Aleni Peltsems, representing Real Estate Compliance, had no open issues and stated that her office recommended approval of the plan. Bruce Gill, Bureau of Development Plans Review, spoke on behalf of the Department of Recreation and Parks and confirmed that a waiver from the provision of local open space had been requested. It was the opinion of the Department that fulfilling the requirement of 34,000 square feet of local open space would cause undue disruption to the site with a need for additional retaining walls to satisfy grading issues and more removal of trees, particularly in the northern area of the site to come into compliance with the grading required for local open space. As a result of these factors the Department approved that a fee in lieu be paid in a letter dated January 11, 2012 in the development file. Steven Foster, State Highway Administration, submitted correspondence prior to the hearing.

Jennifer Nugent, representative of the Department of Planning, appeared and recommended approval of the red-lined Plan. She confirmed that her Department had reviewed and approved the required, amended School Impact Analysis submitted on January 23, 2012. Her Department in addition to reviewing the Plan for compliance under the Development Regulations had also reviewed the Plan for compliance with the Baltimore County Master Plan and with the performance standards contained in the Baltimore County Zoning Regulations, Section 260. In all these respects she testified that the Plan complied with the County's requirements. Her Department further agreed with the requested waiver of Public Works standards with regard to the size of the cul de sacs in order to reduce the paving area and site impacts.

Don Muddiman, representing the Baltimore County Fire Marshall's Office and the Baltimore County Fire Department, stated that his Department likewise had no objection to the change in the diameter of the cul de sacs as requested under the waiver. The diameter shown on the red-lined plan is sufficient to meet the turning radii of the fire department equipment. His Department had no open issues with the Plan.

Dennis Kennedy, Supervisor, Development Plans Review, submitted his comments on behalf of the Department of Public Works. He testified that the redlined Development Plan met all of his Department's requirements and addressed all of its concerns. He further stated that the requested change to the radii of the cul de sacs was not considered a waiver of county requirements but rather a permitted exception to the policy approved by the Department. He recommended that the plan be approved.

Jeff Livingston represented the Department of Environmental Protection and Sustainability. He stated that the storm water management, ground water management and environmental impact review bureaus of the Department had all reviewed and approved the red-lined plan in keeping with their regulations.

During the course of the formal portion of the hearing many of the agency representatives were called as witnesses to explain and defend the positions of their agencies. In particular, Ms. Nugent and Mr. Kennedy testified extensively, and Al Wirth, Chief of the storm water management section, Robert Powell, Chief of the ground water management section, and Glenn Shaffer, of the environmental impact review section, all of the Department of Environmental Protection and Sustainability (“DEPS”), testified as to the various issues with which they were confronted in reviewing this project, and how ultimately they were satisfied with the red-lined plan and the environmental variances sought. Ms. Terry Reising, of the Department of Planning, testified with respect to the adjacent Baltimore County landmark on the Jacobs Property and that the proposed dwelling adjacent to this landmark site would not have any impact on the site.

After each of the agencies commented, and there being no open issues, the Protestants to the plan through their counsel proffered that there were numerous open issues including, but not exclusively, issues with traffic, environmental impact including adverse wetland and storm water management impacts, open space, and development design.

The Developer then presented as its first, and principal, witness Stacey McArthur, Registered Landscape Architect with D.S. Thaler & Associates, Inc., to testify regarding preparation of the Plan and compliance of the Plan with the applicable code requirements. After demonstrating her experience with the Baltimore County development process and her familiarity with the applicable Baltimore County Zoning Regulations and appropriate voir dire, Ms. McArthur was accepted as an expert witness. She confirmed that she was responsible for the preparation of the redlined Development Plan in the present case; and, in order to place the property into the context of the surrounding area, referred to an aerial exhibit (Developer's Exhibit 5). The aerial shows the impact of existing development into the wooded areas and the relationships of the proposed development to the townhouse

community of Cromwell Station and the single family, detached dwelling community of Cromwood Coventry. The witness (as well as in earlier testimony on behalf of the Department of Planning) opined that the site provides a good transition from the townhouses on the northeast to the single family houses in Cromwood and Coventry.

Ms. McArthur described her efforts in working with the various County agencies from the concept plan stage through the preparation of the redlined Development Plan, including the changes made in response to County comments. Finally, she opined that the proposed Plan meets all development regulations and applicable County policies, rules, and regulations. The zoning on the site would support forty four (44) single family dwellings. Thirty four units (34) are proposed.

Access to the subject property is off of an extension of Rushley Road, which is a private road but has been publicly maintained. She described the internal road network of the development and included observations about the changes in size to the cul de sacs from those proposed in the concept plan along with the exceptions approved by the Department of Public Works. The Developer had requested cul de sac radii of 51' in lieu of the 60' shown on the Department's Standard Detail Plate R-E dated February 10, 2010. The cul de sacs are still large enough to accommodate school busses and fire trucks. Their reduction in size minimizes impact on the surrounding areas. The southern cul de sac is constrained because of the topography and the 30' change in elevation between the property line and the forest buffer area to the north. The site also provides the sole means of access to the adjoining property owned by the Jacobs family. A panhandle to the Jacobs site has been provided as required.

The topography on the site requires retaining walls in order to prevent even more grading and additional grading into wooded areas on the north of the site. The wall on the

northern side of the property protects a priority forest area. Other retaining walls on the site are much smaller in scope to provide for better transitions.

There are several areas of open space proposed on the plan. On the site today are approximately 6 wooded acres. According to the red-lined development plan the site will actually retain about 3.5 acres, and as part of mitigation the developer will plant an additional acre. A homeowners' association will be formed and will have control over the easement areas for forest conservation and forest buffer. The areas reserved for common area include the southern, eastern and northern portions of the perimeter of the property. Virtually all of this perimeter area will be landscaped.

The landscape plan shown as part of the Development Plan is at this time purely a schematic plan showing a proposed landscape treatment utilizing the required plantings. It is subject to a more detailed landscape plan to be filed and reviewed prior to record plat. These landscape plantings are in addition to the mitigation required by DEPS.

A variance of the forest buffer was granted by the Director of DEPS pertaining to a triangular area on the rear of Lot 24 (Dev. Ex. 7). Conditions were placed on the granting of this variance including the planting of existing buffer area. The justification for the variance was that the buffer area will be separated from the remaining buffer by a proposed sewer line and easement intended to serve offsite properties as required by DPW and recommended by the ground water management bureau of DEPS. This proposed method of delivering sewer service was approved after review and approval of an alternatives analysis by DEPS as the least intrusive and most reliable means of bringing public sewer to the lots along Mountain Avenue currently relying on private septic systems.

An additional forest conservation variance was recommended by the Director of DEPS for the removal of 8 of the 10 approved specimen trees from the site (Dev. Ex. 8). One of these trees is on the northwest perimeter of the property. A few more are scattered in

the center of the proposed development proximate to the existing dwelling and improvements. The rest of the trees are in the forested area in and around the cul de sac in the southeast corner of the property. The trees are in varying conditions of health. One of the reasons stated by the witness for the need to remove the trees was the need to do extensive grading between the southern property line and the wetland areas in order to accommodate the storm water management facilities and the cul de sac. The topography of the site is such that there is a substantial drop in elevation of about 30' from the property line to the storm water areas in a relatively small distance and retaining walls will be necessary in order to build in the cul de sac. The removal of the trees in the southern area was felt to be less impactful on the overall resource than further intrusion into the northern wooded area. Payment of a fee in lieu of the trees retention is required.

Ms. McArthur also reviewed the Pattern Book (Petitioner's Exhibit 2) showing the architectural treatment of the proposed dwellings in accord with the comments from the Planning Office. She discussed the high visibility treatment on the sides of the corner lots and went over the aerial pictures of the site.

It was her opinion that the development plan met all county development requirements, all zoning regulations and the Comprehensive Manual of Development Policies and complied with all County agency comments. Changes in the plan after the concept plan introduction reflect changes sought by agencies and community comments. Essentially several lots were eliminated and the access to the Jacobs property changed.

The site is not located in a deficiency area for water, sewer, traffic or schools. Schools are under capacity as determined by Baltimore County regulations. The site has several means of access to public sewer, and the route chosen is not in a deficient area.

Her cross-examination was extensive. Issues explored included the relationships of the proposed lots to the existing lots and houses on the north side of Littlewood Road; the

alteration of the cul de sac design for storm water management and the status of Rushley Road as a private road.

There was substantial questioning on the intrusion of the development into the wooded area on the north side of the property. Storm water management, particularly the impact of the outfalls was also reviewed. The witness responded that the outfalls were found to be suitable according to county standards by DEPS.

The location of the sewer line serving the site also was an issue on cross-examination. Ms. McArthur testified that the chosen sewer line to the Cromwell Station town house development was determined because access to sewer through Rushley accessed an area of sewer concern for the county. The county recommended that an alternative sewer access be found. The proposed tie in is to a sewer line that lies in Roger Valley Court in Cromwell Station. There is an existing utility easement from that line to the Jacobs property. An agreement was reached with the Jacobs family to access that line through their property as shown on Petitioner's Exhibit 1. Alternatively, the entire site could have been served by grinder pumps with access to Mountain Avenue, but the county does not recommend grinder pumps where gravity sewer is available.

Although she did not know of her own knowledge whether the septic systems serving the dwellings on Mountain Avenue were failing, the County bureau of groundwater management wanted to provide access to a public system for those three lots. Consequently, the sewer connection to the Barilla property was shown. Another means of sewer access for these homes would have been to have an off-site extension of the force main in Mountain Avenue and connection through grinder pumps. She testified that the county did not prefer grinder pumps.

With respect to the forest conservation variance the Developer requested, she testified that even if dwellings were eliminated from the proposal, specimen trees would still have to

be eliminated because of the topography change on the southern portion of the site. Lots could be lost if the variance is not granted such as lots 8, 9, 20, 23, 26 and the southern cul de sac would have to be moved or lost.

As previously indicated, several County staff members were called as witnesses to present evidence pertaining to their agency comments. Glenn Schaffer of the Environmental Impact Review Section of DEPS provided extensive testimony pertaining to his wetland evaluation and the criteria he used. A long time employee in the County's Environmental Protection Department, Mr. Shaffer testified as to the findings of his department as an expert in wetland soils, and forest conservation. He is certified by the state as a qualified in forest conservation and had been conducting soil studies and forest stand studies for decades. He has given testimony in zoning and development cases on numerous occasions representing his agency and has reviewed hundreds of development plans.

Initially, in preparing the existing conditions for the subject property the environmental consultant retained by the Developer submitted to the County a delineation of wetland areas. After examining the conditions in the field, Mr. Shaffer disagreed with some of the consultant's findings. Mr. Shaffer's finding that wetlands and buffer areas surrounding the wetlands should be augmented on the eastern side of the property adjacent to the Jacobs property was not contested at the hearing. His finding, however, that an area adjacent to the rear of the Littlewood lots on the north side of the property was not a wetland was heavily debated.

Mr. Shaffer testified that he had visited the property four (4) times. After reviewing the site with the developer's representatives he went back on his own to the site on a couple of occasions to review issues which had been posed to him by the developer and by the community. He also most notably went back solely with representatives of the community

including a number of the Protestants to review with them his determinations and explain why he made the decisions he did.

Mr. Shaffer testified that he understood why on first look an area on the northern part of the site identified on the Concept Plan (Dev. Ex. 6) might seem to be wetlands because a pipe draining from the rear of 8733 onto the site created a wet area, but that a wet area did not by itself qualify an area as wetlands. He found that neither the soils nor the vegetation justified such a determination. The criteria he used and discussed in the hearing are those used by the Army Corps of Engineers and by the State of Maryland in determining whether wetlands exist. A finding that the area does constitute wetlands would not only ban development from that area, absent a variance, but also would ban development from the mandatory buffer area intended to protect the resource.

Mr. Shaffer also testified with respect to the forest buffer variance granted by the Director of DEPS on Mr. Shaffer's recommendation (Dev. Ex. 7). No variance has been sought in this case from an actual intrusion into the resource by any lot or dwelling. He also explained why the forest buffer variance was justified in his opinion given the alternatives available for sewer service. He had no problem with the issuance of the variance and reviewed the criteria cited in the Baltimore County Code.

With respect to the specimen trees he personally reviewed the specimen trees on the submitted list and agreed with the recommendation that a variance be granted for their removal (Dev. Ex. 8). He had no concerns with granting the removal of the 8 trees based on the criteria in the Baltimore County Code and the alternatives available.

On cross examination and redirect he expanded on his visits to the site and on the criteria he reviewed for the wetlands determination and the variances granted. He cited County Code Section 33-3-111 as the basis for determining the buffer area. He personally walked the site to review the forest stand delineations submitted by the developer as well as

the locations of the streams and wetland areas. He met on the site with a representative of the developer's consultant and did soils borings in different locations to determine soil conditions. He came to the conclusion that the pipe from 8733 Littlewood was artificially introducing water onto the site and that it was not part of the natural hydrology. The determination of wetlands is not really discretionary because it is based on set criteria. The borings he took with the consultant were confirmed by additional borings he took in early March, 2012 prior to the March 8 hearing. He dug three additional holes and had 3 data sheets per hole. He assessed the vegetation and the hydrologic conditions in a 30 foot radius around the holes. He reviewed Protestants' Exhibit 3 with respect to these findings and explained it to the community representatives during his field trip with them and compared it with the data for the wetlands area existing adjacent to the Jacobs' parcel.

Also, on cross examination he further reviewed the forest buffer variance granted by the Director. He testified that there are major mitigating factors. Over 1 acre of lawn will be planted to become forest buffer. All of the available buffer area on the site is being planted. An additional 13,000 square feet will be planted off-site. The area of buffer being lost will be cut off from the balance of the buffer area and from the resource to be protected by the placement of the sewer line to adjoining properties. Even if the buffer area lost was to remain undeveloped, it would have no positive impact on the remainder of the buffer or on the resource because of it being cut off from the balance of the buffer area whereas the mitigation requirement will indeed have a positive impact.

On the forest conservation variance Mr. Shaffer evaluated the project with respect to the three (3) criteria in the Baltimore County Code section 33-6-116. Section 33-6-116(d) is worded in the disjunctive, and only 1 of the 3 criteria has to be met. In this case he believed that there were unique circumstances due to the number and orientation of the specimen trees. They were not located in any forest buffer or forest conservation areas. It is speculative to

say that fewer lots would save the trees, for it depends on the layout. He also did not believe that it would alter the essential character of the neighborhood. The character of the neighborhood is single family homes on small lots and that is consistent with the proposed plan.

Robert Powell, the chief of the groundwater management section of DEPS testified as to the need to make public sewer accessible to the three (3) existing lots on Mountain Road not currently served by public sewer. He testified that because this development was adjacent to those properties it could be made to extend sewer to them.

Dennis Kennedy, the supervisor of Development Plans Review Section in the Department of Permits, Approvals and Inspection, had visited the site in January to prepare for the Development Plan Review Committee meeting. He also testified under oath to support his comments that the plan met the development criteria of the Department of Public Works. All of his agency comments had been addressed by the time of the hearing. His agency will review the final grading plans along with the Department of Environmental Protection and Sustainability. The gravity sewer line as shown on the development plan came about after a meeting he had with Rob Powell and Glenn Shaffer of DEPS and was the agreed location.

Jennifer Nugent, Donnell Ziegler and Terry Rising, all of the Department of Planning testified. Ms. Rising was called to respond to issues pertaining to the landmark nomination made by members of the Cromwell Coventry Community Association for the adjacent Jacobs property and the impact of this development on that site. She testified that in her opinion as the Historic Preservation Planner for Baltimore County that the proposed development would have no impact on the preservation of the Jacobs site and would not compromise its historic integrity. Donnell Ziegler is the community planner for the area, and he, like the other witnesses, had personally visited the site. He testified as to the zoning issue that had been raised on properties surrounding the site in the comprehensive zoning map process, but

pointed out that this site was not included for any proposed zoning change. He had reviewed the concept plan, and believed the lots in conformance with others nearby. There are no community plans which include this site.

Jennifer Nugent testified that she was familiar with the area and had visited the site twice, prior to the concept plan meeting and again prior to the development plan conference. She analyzed the proposed plans with respect to the Master Plan, the requirements in the Comprehensive Manual of Development Policies and with respect to the performance standards contained in Section 260 of the Baltimore County Zoning Regulations. She testified with respect to each of the six (6) criteria contained in Section 260.2.A. She recognized that as to Section 260, the retaining walls deviated from a standard of gradual grade transitions, and believed that enabled the site to comply with environmental standards and helped achieve the best overall design. She considered the standards and the comments from other agencies with respect to the protection of resources. One of the issues pertained to required road grading; another required a retaining wall in order not to go further into the forested area to the north. In her opinion the plan reflected reasoned responses to the challenging grades and site conditions, and the development fit within the context of the surrounding communities. She also covered the changes to the Pattern Book (Dev. Ex. 2). Changes had been made to the Pattern Book in response to concept plan comments. All of the Planning Department Concept Plan comments had been addressed in the Development Plan and the revised calculations to the school capacity analysis were accurate.

Al Wirth, Chief of the Storm Water Management Section of DEPS had reviewed the site proposals for storm water management. He had walked the site in February and had looked at where the development was proposed and the area impacted by the outfalls of the storm water management ponds. He believed that the proposal complied with the latest state requirements for storm water management and that the outfalls would have no impact on the

steep slopes because the areas of discharge were relatively flat. There will be “as built” plans required after construction of the ponds to make sure that they comply with the regulations. In fact, he testified that if the storm water management system operated as proposed there would be a benefit in water quality and quantity management from the site as proposed over how it exists today without storm water management.

In addition to these county witnesses, Aaron Tsui of the Zoning Section of the Department of Permits Approvals and Inspections testified as to the existing zoning supporting the proposed density. Bruce Gill of the Development Plans Review section of the Department of Permits, Approvals and Inspections testified as to the open space issues. He stated that additional retaining walls would be necessary to achieve the maximum four percent (4%) grade required for active open space and ten percent (10%) grade for passive open space in a sparsely wooded area. In the context of the site issues and given the location of the site and development the fee in lieu waiver of local open space appeared to be a reasonable alternative.

Numerous citizens testified with respect to their concerns. Among the myriad of issues raised were the following: traffic (increase in traffic flow, danger of intersections with Joppa Road being increased with additional trips per day, lack of adequate access to community, lack of street maintenance, lack of sidewalks in community, residents use streets as walkways, dangerous off-set intersection of Littlewood and Rushley Roads due in part to school bus stop at intersection because buses cannot turn around west from intersection), compatibility with the neighborhood (lots smaller than lots across Rushley and in Coventry, house types are different, do not fit in), ruining beautiful natural area by taking down trees, particularly behind lots on Littlewood, putting in retaining walls, intruding into woods on northern side of property, size of development (too many lots), failure to adhere to design guidelines (cookie cutter houses, site layout, failure to respect existing topography, failure to

vary street setbacks, access to Jacobs property, impact of development on Jacobs site) views from Rushley lots and Littlewood lots (looking at houses instead of woods and open fields), impact on the environment (loss of trees, additional runoff, erosion of steep slope and sensitive wooded areas, storm water outfalls near steep slopes, building in apparent wetland behind 8733 Littlewood and lack of trust in Glenn Schaffer analysis, failure to account for critical area of state concern, impact of development on Cromwell Valley, Baltimore County Code, Article 33 variances), infrastructure concerns (impact on sewer system it is accessing, issue of water pressure, impact on Baltimore City water tunnel, impact on services and maintenance of Rushley Road, design of development entrance at Rushley impacting on property rights, veracity of traffic analyses by Developer and County, veracity of school impact numbers, lack of local open space), development issues (underground water from limestone formation, impact and supervision of possible blasting for rock, impact of prolonged construction on neighbors, impact on construction vehicles on community).

The Protestants put on one expert, Mr. James Patton, who qualified as an expert civil engineer with a background in land planning. He spoke to five (5) issues including the City of Baltimore Water Tunnel, the issue of the wetlands behind Littlewood where he recommended additional study, the open space waiver and the failure to identify adjoining open space, failure in his opinion to account for the area of critical state concern, and to accurately identify steep slopes and address their importance.

The Developer called Mickey Cornelius, a traffic engineer with the Traffic Group, as an expert in traffic engineering to respond to some of the concerns raised by the community. He testified that the area was not deficient, that the traffic in the area was very modest now and the addition of the trips generated by the new development spread out over the day would continue to generate very modest numbers. His views concurred with those offered by Baltimore County in a memorandum analysis prepared at the request of the Protestants (Dev.

Ex. 16).

David Thaler, Professional Engineer and President of D.S. Thaler & Associates, Inc., who was accepted as an expert witness based on his background, education, and 36 years of experience in the field of land development, as well as expertise in civil engineering and land planning, responded to Mr. Patton's issues, particularly as to the area of critical state concern and the water tunnel. He opined that the proposed development met the criteria in the Baltimore County Code and Zoning Regulations.

What makes this case unusual is not the passion and fervor of the Protestants in assailing the development proposed, as in-fill development such as this, by definition, intrudes into otherwise established communities with something new and different; often eliminating cherished open areas which the community has perceived to be part of their overall neighborhood. Unhappily, it also is not unusual because of the community skepticism as to the conclusions of county employees charged with the review of development plans. All too often the credibility of good people using their talent, education and experience in applying often complex regulations are called into question because of the passion and fervor with which opposing opinions are held.

What makes this case unusual is the fact that despite the passionately held beliefs of the parties they were able eventually to sit down and agree to certain conditions and amendments to the proposed development plan, which apparently meet the needs of the developers, the criteria of the development regulations and make this a better proposal. It is gratifying to know that people of good will can, despite vigorously held opposing opinions, work for a better plan such as the Agreement and blue-lined plan which will be incorporated as part of this Order. The blue-lined plan and the amended development plan will be accepted by consent of the parties as Developer's Exhibit 34.

The Baltimore County Code (B.C.C.) 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. Section 32-4-229.

After consideration of the testimony and the dozens of exhibits entered into the record, I am persuaded by the testimony of the County staff members who testified and by the evidence and testimony of the traffic engineers as well as by the information contained on the plans and that the development plan does meet the county requirements. I was very impressed by the efforts made by so many county staff members to become involved in this project. Their reviews were not cursory rubber stamps of submissions. The fact that approximately twenty (20) state officials also were consulted by members of the community is also impressive. Not one agency, not one staff member after extensive review stated that this development failed to meet any of the County’s development criteria or would otherwise jeopardize the public, health, safety or general welfare on any of the described concerns.

Although the development was presented with a forest buffer variance granted by the Director of DEPS and now on appeal, the variance granted has a direct impact on only one of the building lots. There was much testimony about the impact of the buffer from various agencies and individuals. Based primarily on the testimony of Mr. Shaffer, I am persuaded that the variance was properly granted under the Code. The fact that the buffer area has no functional value to support the resource with the placement of the sewer line is also significant. The sewer line clearly is intended to correct an existing environmental issue, which cannot be ignored. When the placement of this sewer line is coupled with the mitigation that is truly benefiting the resource, the impact of the forest buffer variance benefits the community and the resource.

I am also persuaded that the forest conservation variance should be granted as recommended by the Director of DEPS, particularly in light of the agreed upon changes to the landscaping along the southern edge of the property as reflected on the blue-lined plan.

The DEPS analysis, as further explained by Mr. Shaffer in his testimony pertaining to both the forest buffer variance and the forest conservation variance, is persuasive. The changes to the cul de sac design approved by the Department of Public Works are appropriate. The changes on the plan address issues with respect to Rushley Road and the entrance, location of lots and houses behind the lots on Littlewood and the grading and tree retention behind the Littlewood lots. While not every community concern may have been satisfied for all, few would argue that this is not a better plan in addressing the totality of the community issues. The Agreement itself addresses other issues.

I am also persuaded that the action of the Director of the Department of Recreation and Parks in granting the local open space waiver and to accept a fee in lieu was appropriate. To the extent that I have the authority to do so, I will order that any funds from the fee in lieu should be used in the acquisition and enhancement of a trail system from the Cromwell Valley Park through the subject site so that a trail system through this beautiful area (a fact agreed to by all concerned) can be created and maintained. The Cromwell Valley Park has proven to be a great asset, and any funds available from the fee in lieu should be used for its enhancement.

Therefore, after due consideration of the testimony and exhibits presented to me as part of the Development Plan proposal, as well as the concurrence of the various County agencies, I find that the Development Plan is in compliance with all applicable policies, rules, and regulations. Therefore, having no remaining unresolved or outstanding issues that would prevent Plan approval, the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the revised 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 **“CROMWELL RIDGE”** Development Plan, accepted into evidence as

Developer's Exhibit 31 shall be APPROVED.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 30<sup>th</sup> day of January, 2013, that the Development Plan for Cromwell Ridge as amended by the red-lined plan and Pattern Book and subsequently amended by the blue-lined plan identified herein as Developer's Exhibit 34, incorporating the waivers and variances, be and is hereby APPROVED;

IT IS FURTHER ORDERED that the Restrictive Covenant Agreement attached hereto be incorporated herein, its terms subject to enforcement as part of this Order upon it becoming final under its terms; and

IT IS FURTHER ORDERED that the forest conservation variance recommended by the Director of the Department of Environmental Protection and Sustainability be APPROVED; and

IT IS FURTHER ORDERED that the funds from the fee in lieu should be used in the acquisition and enhancement of a trail system from the Cromwell Valley Park through the subject site so that a trail system can be created and maintained.

Any appeal of this Order shall be taken in accordance with B.C.C. Section 32-4-281.

\_\_\_\_\_  
Signed \_\_\_\_\_  
LAWRENCE M. STAHL  
Managing Administrative Law Judge  
for Baltimore County

Attachment: Restrictive Covenant Agreement