

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
4300 Sweet Air Road (Md. Rte. 145)		
10 th Election District	*	ADMINISTRATIVE HEARINGS
5 th Councilmanic District		
(Ellerslie Property)	*	FOR
Jacquelyn Q. Russo Living Trust and	*	BALTIMORE COUNTY
Frank Biago Russo Residuary Trust U/W		
<i>Owners</i>	*	HOH Case No. 10-462
Toll Bros., Inc., <i>Developer</i>		
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**ADMINISTRATIVE LAW JUDGE’S
DEVELOPMENT PLAN OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (OAH) 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.”). Jacquelyn Q. Russo Living Trust and Frank Biago Russo Residuary Trust U/W, the owners of the subject property, and Toll Brothers, Inc., the developer of the subject property (hereinafter “the Developer”), submitted for approval a two-sheet redlined Development Plan (“Plan”) prepared by Martin & Phillips Design Associates, Inc., known as “4300 Sweet Air Road.”

The Developer proposes 35 single-family dwellings situated on 95 acres of RC 5 zoned land. The site is currently improved with one (1) vacant single-family dwelling, which is listed as the Frank B. Russo House and has a Maryland Inventory of Historic Properties (MIHP) No. BA-604. The site is a mix of woods and field.

Details of the proposed development are more fully depicted on the redlined two-sheet Development Plan that was marked and accepted into evidence as Developer’s Exhibit 1A & 1B. The property was posted with the Notice of Hearing Officer’s Hearing on January 22, 2014 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location

of the hearing. The undersigned conducted the hearing on Thursday, February 20, 2014, at 10:00 AM, Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland.

In attendance at the Hearing Officer's Hearing (HOH) in support of the Plan on behalf of the Developer and property owner were Jeff Driscoll, Paul Scott, John Harris and Thurman Reynolds, both with Toll Brothers, Inc., David Martin, Professional Landscape Architect, with Martin & Phillips Design Associates, Inc, the consulting firm that prepared the site Plan, Paul Scott, and Mike Lenhart with Lenhart Traffic Consulting, Inc. Patricia A. Malone, Esquire and Christopher D. Mudd, Esquire, both with Venable, LLP, appeared and represented the Developer. Also in attendance was G. Scott Barhight, Esquire with Whiteford, Taylor & Preston, LLP.

Several citizens from the area also attended the hearing and their names are reflected on the sign-in sheets. Each of the residents expressed strong opposition to the proposed road connection at Cremson Drive, an issue discussed in greater detail below.

Numerous representatives of the various Baltimore County agencies who reviewed the Plan also attended the hearing, including the following individuals from the Department of Permits and Development Management: Darryl Putty, Project Manager, Dennis A. Kennedy and Jean M. Tansey (Development Plans Review [DPR]), Brad Knatz, Real Estate Compliance, and Aaron Tsui (Office of Zoning Review). Also appearing on behalf of the County were David Lykens from the Department of Environmental Protection and Sustainability (DEPS), and Lloyd Moxley from the Department of Planning (DOP).

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. 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. Mr. Lykens indicated he could not recommend approval of the Plan, since the Developer had not obtained from DEPS approval of storm water management and forest conservation plans. Messrs. Moxley and Kennedy also indicated that the Developer failed to satisfy certain roadway connectivity requirements set forth in the B.C.C. and Comprehensive Manual of Development Policies (C.M.D.P). These issues will be considered separately in a following portion of this Memorandum.

The other agency representatives indicated the Plan addressed any and all comments submitted by their agency, and they each recommended approval of the Plan. Mr. Moxley provided a Pattern Book for the development (Baltimore County Exhibit 2), which he indicated satisfied the residential performance standards in Baltimore County Zoning Regulations (B.C.Z.R.) § 260. He also presented a school analysis (Baltimore County Exhibit 1) indicating that the area schools are not overcrowded using state guidelines. Ms. Tansey, the County's landscape architect, indicated the Developer provided sufficient land on site to satisfy the Local Open Space regulations.

In the "formal" portion of the case, the Developer presented two witnesses. First was David Martin, a landscape architect who was accepted as an expert. Mr. Martin explained in detail the development proposal, which involves 35 single-family dwellings on approximately 90

acres. Mr. Martin opined the Developer satisfied all Baltimore County rules and regulations.

Michael Lenhart, who is a licensed Professional Engineer and was accepted as an expert, was the next witness in the case. Mr. Lenhart is a traffic engineer, and he prepared and submitted a “traffic statement” which was admitted as Developer’s Exhibit 6. Mr. Lenhart opined that the roadway connection sought by the County was “not necessary to optimize fire and emergency response.” Id. at p.3. He also indicated that the proposed connection would not significantly improve the levels of service at the nearby intersections. Id. at p.4.

DEPS ISSUES

As noted above, Mr. Lykens testified that the Developer has yet to receive DEPS approval of a storm water management plan for the site. Mr. Lykens stated that as shown on the Development Plan the Developer’s storm water management devices are not set back a sufficient distance from the private well and septic systems. He also indicated the Developer originally planned to satisfy the Forest Conservation regulations by providing off-site mitigation, but recently amended the Development Plan to show that one acre of forest would be planted on site in order to satisfy the regulations. Mr. Lykens noted that DEPS has not yet had an opportunity to review a forest conservation plan reflecting these changes, although the Development Plan does contain a redline change indicating a one acre “proposed reforestation area.”

Mr. Martin addressed these issues in his testimony, and noted that it is difficult for the Developer to show the exact location of the storm water management devices at this juncture, since a purchaser has not yet decided the type and configuration of house that will be constructed on any given lot, which in turn dictates the placement of the devices. The witness was certain however that the Developer will be able to satisfy in Phase II all of these DEPS requirements. Mr. Martin also testified that Developer is in the process of submitting for approval by DEPS a forest conservation plan. In these circumstances, I believe that these issues can be dealt with by

appropriate conditions in the Order which follows.

ROAD CONNECTION

The far more controversial issue in this case (in reality, the only point of contention) concerned the proposed connection of Cremson Drive and Old Farm Road through the new development. Several neighbors testified they were adamantly opposed to such a connection, which they said would destroy their quality of life. The residents said they purchased their homes (at least in part) based on the fact that it was not a through street, and they feared that any connection would bring speeding motorists seeking to avoid the crowded main roads. Both the residents and Developer's witnesses stressed that none of the surrounding neighborhoods (which are 30⁺ years old) were interconnected, and that emergency responders have never had difficulty responding to calls for service without the connection proposed by Baltimore County.

Both Mr. Moxley and Mr. Kennedy testified that the C.M.D.P. and B.C.C. require the Developer to make the roadway connection. But, as noted by Developer's counsel, page 53 of the C.M.D.P. (relied upon by Mr. Moxley) only applies to residential developments inside the Urban Residential Development Line (URDL). This proposal, of course, is located outside the URDL. In addition, B.C.C. § 32-4-402(d)(3), cited by Mr. Kennedy, is applicable only in certain zones and subdivisions, not including the RC 5 zone at issue here.

Thus, I do not believe either of these can serve as the basis to require the road connection. Mr. Martin also noted that B.C.Z.R. § 1A04.4.D, cited by the DOP, contains nothing that would require connection of the roads. Upon review of that provision, I believe (as noted in DOP's report) the regulations require "smooth transitions" between the proposed development and the surrounding areas, but I do not believe that regulation speaks to the roadway connectivity issue.

I appreciate and respect the views expressed by both the County and community. But in the circumstances here, I side with the community. County planners and engineers believe cul-de-

sacs represent poor policy and that connected neighborhoods are good neighborhoods. But home builders and home buyers believe cul-de-sacs represent the American dream, where they can raise families on a quiet street, knowing that all traffic is local. This debate exists on a national level, and many governments (including Virginia) prohibit new subdivisions without through streets.

But Baltimore County has not done so, at least with respect to rural residential developments. In urban developments, County regulations require interconnecting streets. C.M.D.P., p. 53. But such regulations are not applicable in rural areas, and I am loathe to impose such a requirement in the absence of any rules, regulations or policies providing guidance on how and when such connectivity is required.

In fact, Master Plan 2010 provides that Baltimore County should “maintain the rural character of the existing road network.” Master Plan, 2010, p. 226. The Master Plan acknowledges that rural collector roads have become “overburdened,” and the County is encouraged to “create traffic and road standards for rural residential areas.” Master Plan, p. 227. I was unable to locate similar statements in Master Plan 2020, but I note the earlier version of the Master Plan only to demonstrate that Baltimore County planners are aware of the dearth of regulations and/or policy addressing rural roads.

In this case, the community has been concerned with the roadway connection issue for at least 10 years, and a 2004 covenant agreement addressing that and related items was shown on the Development Plan. Developer’s Exhibit 1B. That agreement does not bind the County, but it is relevant in that it reflects how important the connection issue was to the community, and I do not believe that the concerns articulated by the County (emergency response time and holistic planning goals) are sufficient to undermine the expectations and desires of a large number of area residents. As noted at the hearing, the adjoining communities were constructed 30⁺ years ago, and no one could recall an incident where an emergency responder was thwarted by the existing

roadway network. The fact remains that residents in a rural area receive diminished (when compared to urban areas) fire and emergency services, which are often provided by volunteer fire companies. Residents choosing to live in such areas need to reduce their expectations for service, but should also be entitled to live on a quiet cul-de-sac if that is a trade-off they are willing to make.

The Baltimore County Code 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 Developer, the exhibits offered at the hearing, and confirmation from the various County agencies that the Plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the 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 “Ellerslie Property” Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 25th day of February, 2014, that the “**ELLERSLIE PROPERTY**” redlined Development Plan, marked and accepted into evidence as Developer’s Exhibit 1A & 1B, be and is hereby **APPROVED**, subject to the conditions noted below.

1. Prior to obtaining any necessary permits, the Developer shall submit and have approved by DEPS a forest conservation plan for the site.
2. Prior to obtaining any necessary permits, the Developer shall submit and have approved by DEPS a storm water management plan, and shall satisfy all storm water management device setback requirements imposed by DEPS.

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