

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
14 th Election District		
6 th Councilmanic District	*	OFFICE OF
(Shirley Ridge)		
	*	ADMINISTRATIVE HEARINGS
Shirleybrook 1, LLC, <i>Developer</i>		
Shirleybrook 1, LLC and Paul Holcomb,	*	FOR BALTIMORE COUNTY
<i>Owners</i>		
	*	HOH CASE NO. 14-0488

* * * * *

**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.”). Shirleybrook 1, LLC, the developer of the subject property (hereinafter “the Developer”), submitted for approval a three (3) sheet Redlined Development Plan prepared by Richardson Engineering, LLC, known as “Shirley Ridge.”

The Developer proposes to construct 17 single-family dwellings situated on 28.18 gross acres of DR 3.5 (comprising approximately 26 acres +/-) and DR 5.5 (comprising approximately 1½ acres +/-) zoned land. The site is currently improved with one single-family dwelling. The majority of the tract is wooded with a riparian feature on its eastern and southern perimeters. Of the total tract acreage, the Developer indicated that 74% of the land would be left undisturbed due to environmental features.

Details of the proposed development are provided on the redlined Development Plan that was marked and accepted into evidence as Developer’s Exhibit 1A - 1C. The property was posted with the Notice of Hearing Officer’s Hearing on May 31, 2013 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 Developer and property owner was Scott Woods and Donald N. Mitten, PE with Richardson Engineering, LLC, the consulting firm that prepared the site plan. Christopher D. Mudd, Esquire with Venable, LLP, appeared and represented the Developer.

Several citizens from the area also attended the hearing, represented by Leslie M. Pittler, Esq., and their names are reflected on the sign-in sheets.

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, Approvals and Inspections (PAI): Colleen Kelly on behalf of Jan Cook, Project Manager, Michael Viscarra (Development Plans Review [DPR]), Bruce Gill (DPR), Gigi Hampshire, Real Estate Compliance, and Jason Seidelman (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 and Brett Williams, both 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. 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. At the hearing, each of the Baltimore County agency representatives identified above indicated that the redlined Development Plan addressed any and all comments submitted by their agency, and they each recommended approval of the plan. Mr. Moxley noted the pattern book for the development (Baltimore County Exhibit 3) satisfied the residential performance standards in the Baltimore County Zoning Regulations (B.C.Z.R.) § 260. He also presented a school impact analysis (Baltimore County Exhibit 2) indicating that the high school (Overlea) and middle school (Parkville) districts will be below the State Rated Capacity ("SRC"). The elementary school district (Fullerton) is projected to be above SRC (120.09%). See Baltimore County Exhibit 2, Form 4. Even so, the DOP indicated that to reduce Fullerton's enrollment to 115% of SRC – as required by state and county law – there "must be spare capacity for 24 students," which could be accommodated at adjacent elementary schools, including Carney, Joppa View, Oakleigh, Villa Cresta and Vincent Farm. Mr. Gill submitted a letter (Baltimore County Exhibit 1) indicating the Developer will pay a "fee in lieu" of \$58,777.50 to satisfy the Local Open Space regulations.

In the "formal" portion of the case, the Developer presented the testimony of Donald Mitten, a Professional Engineer who was accepted as an expert. Mr. Mitten indicated he visited the site on many occasions, and he described the project in some detail, and also addressed several of the concerns raised by the community, which will be addressed in another section of this Opinion. Mr. Mitten explained that under the B.C.Z.R., over 100 density units would be permitted on the site, although the Developer proposes to construct only 17 single-family

dwellings. The witness stated the site is “ringed” with environmental features which constitute approximately 74% of the total land area.

Mr. Mitten next discussed the deviation of standards under B.C.Z.R. § 260, to dispense with plantings in the center of the cul-de-sacs, and the three (3) waivers of Department of Public Works (DPW) standards (cul-de-sac diameters, sidewalks on only one side of proposed roads, and a 24' paving section on a 44' wide right-of-way within the subdivision) sought by Developer. Mr. Mitten indicated the waivers would reduce the amount of impervious surface required (yielding an environmental benefit) and, with regard to the sidewalks, explained that the plan calls for homes on only one side of the proposed roads. As such, Mr. Mitten opined that the Developer satisfied the requirements set forth in B.C.Z.R. § 260 and B.C.C. § 32-4-107 for such waivers. The witness noted that the DPW and DOP also supported the waiver requests. Finally, Mr. Mitten opined that the three (3) sheet Redlined Development Plan satisfied all requirements contained within the B.C.Z.R. and B.C.C., and noted that no zoning relief was requested; i.e., it is a “variance free plan.”

Community Concerns

As noted at the outset, several members of the community attended the Development Plan hearing, and expressed concern with the project. The primary concerns related to the means of access to the proposed development and the safety of motorists/pedestrians along Babikow Road.

Mr. Mitten explained the development will be accessed via Shirleybrook Avenue, which intersects with Babikow Road. The community members in attendance were surprised that neither Baltimore County nor the Developer had conducted any sort of traffic count or study of this intersection and roadways. Mr. Vascarra from DPW noted that under Baltimore County

policy, such a study is only required when a developer proposes to construct 50 or more housing “units.” Since only 17 single-family dwellings are proposed herein, Messrs. Vascarra and Mitten testified that such a study was not required.

The community also questioned why the Developer could not construct a means of ingress/egress that did not use existing Shirleybrook Avenue. Mr. Mitten presented an exhibit (Developer’s Exhibit 4) that depicted in green the forest buffer, flood plains and other environmental features that exist on the site. As noted earlier, Mr. Mitten testified these features “ringed” the site. The witness explained that DEPS would not approve an intrusion into these environmentally sensitive areas if a viable “alternative” existed that would not compromise the integrity of the buffers and flood plain. Given that Shirleybrook Avenue (and Babikow Road) are existing roadways that can be accessed without disturbing buffer areas, Mr. Mitten testified that the law and DEPS would not permit any other point of ingress/egress. In fact, county law states that roads “are authorized within the forest buffer provided that an alternatives analysis has clearly demonstrated that no other feasible alternative exists.” B.C.C. § 33-3-112(c)(2).

A final issue concerned the width of county-owned right-of-way along existing Shirleybrook Avenue, and whether the proposed 24' wide roadway would be situated entirely on county-owned property, without intruding upon (i.e., trespassing) property of existing homeowners whose deeds (as is common) provide that the owner’s property extends to the center of the adjoining road. Though testimony was not presented on the point, Developer’s counsel indicated at some point the Developer attempted to acquire property for the continuation of Shirleybrook into the development from several area residents, but was unable to do so. Mr. Mitten drew a diagram and presented an exhibit (Developer’s Exhibit 5) detailing where the proposed road would be situated, and he stressed that it will be entirely within county-owned

right-of-way, as reflected by the cross hatched area on Developer's Exhibit 5. As shown on that exhibit, the proposed road will curve outward away from 5012 and 5016 Shirleybrook Avenue. To provide some clarity and assurances to the adjoining neighbors, the approval in this case will be made expressly subject to this condition and representation.

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 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.

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 "Shirley Ridge" Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 2nd day of July, 2013, that the "**SHIRLEY RIDGE**" Development Plan, marked and accepted into evidence as Developer's Exhibit 1A – 1C, be and is hereby **APPROVED**, subject to the following:

1. The local open space waiver fee in the amount of \$58,777.50 shall be allocated and used by Baltimore County solely to benefit and provide recreational amenities to the South Perry Hall area of the 6th Council District.
2. The proposed roadway into the development, which will result from an extension of the existing paving of Shirleybrook Avenue, shall be situated entirely within Baltimore County owned right-of-way, and no part of that roadway or associated facilities (i.e., curb, gutter, sidewalks, etc.) shall encroach upon the parcels owned by Casper Voithofer and Roland Winchester, known as 5016 and 5012 Shirleybrook Avenue.

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