

IN RE: DEVELOPMENT PLAN HEARING &	*	BEFORE THE OFFICE OF
PETITIONS FOR SPECIAL HEARING	*	ADMINISTRATIVE HEARINGS
AND VARIANCE	*	
15 th Election District		
6 th Council District	*	FOR
RAVENHURST PROPERTY		
(Mohrs Lane & Campbell Boulevard)	*	BALTIMORE COUNTY
Sligh & Howarth Associates, LLC and	*	HOH Case No. 15-0867 and
Sleepy Hollow Woods, Inc., <i>Owners</i>		Zoning Case No. 2014-0171-SPHA
Ravenhurst, LLC, <i>Developer</i>	*	

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**ADMINISTRATIVE LAW JUDGE’S COMBINED ZONING AND
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.”). The hearing also involves requests for special hearing and variance relief under the Baltimore County Zoning Regulations (B.C.Z.R.), Zoning Commissioner’s Policy Manual (Z.C.P.M.), and the Comprehensive Manual of Development Policies (C.M.D.P). Sligh & Howarth Associates, LLC and Sleepy Hollow Woods, Inc., legal owners, and Ravenhurst, LLC, the developer of the subject property (hereinafter “the Developer”), submitted for approval a three-sheet redlined Development Plan prepared by Matis Warfield, Inc., known as “Ravenhurst Property.” Developer’s Exhibit 2A-2C.

The Developer proposes 83 single-family attached dwellings accessed via private roads on a 19^{+/-} acre parcel. The site is currently unimproved and has a riparian feature situated to the south of the tract. The developer further proposes to construct a half section of Campbell Boulevard from existing Mohrs Lane to the site. The tract was the subject of 2012

Comprehensive Map Process Issue 6-026, wherein the property was rezoned from D.R. 3.5 to D.R. 10.5.

In addition to the Hearing Officer's Hearing (HOH), the Developer is requesting Special Hearing relief pursuant to § 1B01.3 of the B.C.Z.R. and § 1B01.3.A.7.c of the Z.C.P.M. for: (1) an amendment to the Final Development Plan (FDP) entitled "Sleepy Hollow" (PAI No. 15-415), which plat is recorded among the Land Records of Baltimore County in Plat Book 64, folio 135; (2) from Page 30 of Division II, Section A of the C.M.D.P., if necessary, for the Hearing Officer to grant an increase in the number of town house units in a group up to 8 (from the maximum of 6 units per building group); and (3) for such other and further relief as deemed necessary by the Administrative Law Judge for Baltimore County.

Finally, variance relief is sought as follows:

1. To permit setbacks from front building faces to property lines of no less than 10 ft. in lieu of the required 25 ft. for unit numbers 8-15 and 77-83 (§ 1B01.2.C.1.c);
2. To permit setbacks from rear building faces to rear property lines of no less than 25 ft. in lieu of the required 30 ft. for unit numbers 8-15 and 77-83 (§ 1B01.2.C.1.c);
3. If necessary, to permit decks in the rear yard to extend a distance of 40% of the required rear yard setback in lieu of the maximum permitted 25% (§ 301.1.A) and/or page 33 of Division II, Section A of the C.M.D.P.; and
4. For such other and further relief as deemed necessary by the Administrative Law Judge for Baltimore County.

The property was posted with the required Notices on April 3, 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, May 1, 2014, at 10:00 AM, Room

205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland.

Appearing at the Hearing Officer's Hearing in support of the Development Plan on behalf of the Developer and property owner was Brian Roberts with Roberts Real Estate Development, Inc., Ernest Sligh, Tom Loomis, Mickey Cornelius, and Salvatore C. Crupi, P.E., with Matis Warfield, Inc., the consulting firm that prepared the plans. David Gildea, Esquire and Jason T. Vettori, Esquire, with Smith, Gildea & Schmidt, LLC, appeared and represented the Developer.

Several interested citizens attended the hearing, and their concerns will be addressed in a separate section of this Memorandum.

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: Jan M. Cook (Project Manager), Dennis Kennedy and Jean M. Tansey, Development Plans Review, Brad Knatz, 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 Brett Williams and Lloyd Moxley from the Department of Planning (DOP).

County agencies are required by law 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 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 determine whether there are any unresolved agency 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 (marked as Developer's Exhibit 2A-2C) addressed all comments submitted by their agency, and they each recommended approval of the plan. Ms. Tansey explained that the Developer, in lieu of providing the requisite 83,000 square feet of open space, is proposing to construct a trail system on the site, which will connect to an adjacent parcel to the south owned by Neighbor Space. The Developer must post a bond or letter of credit in the amount of \$235,222.00, which security would be released upon completion of the trail system. More complete details concerning the scope of the trail system, and the Developer's responsibilities, are set forth in the documents marked and admitted as County Exhibit #1, which will be incorporated into the Order which follows.

DEVELOPER'S CASE

The Developer presented one witness, Salvatore C. Crupi, a professional engineer whose firm prepared the Development Plan. Mr. Crupi, who was accepted as an expert, explained the project by referring to the three-sheet Development Plan. Mr. Crupi noted that under the D.R. 10.5 zoning classification, the property would support a much higher density than the 83 townhomes proposed. The homes will be 20' x 42', and most of the units would abut "green space" of some sort. Mr. Crupi identified each of the redlined changes his firm made to the plan to address concerns raised by the County. The witness explained the Developer proposes to construct a hike/bike trail on a portion of the property, which trail would be extended onto an

adjoining 13± acre parcel owned by Neighbor Space of Baltimore County, Inc.

Mr. Crupi testified the project will be accessed by two entrances off of Campbell Blvd. (extended), and that the roads in the development will be privately owned. The witness explained that the site contains a 5.1 acre flood plain area, which is surrounded by forest buffers as shown on the plan. In conclusion, the witness opined that the development proposal satisfied all Baltimore County rules and regulations.

COMMUNITY ISSUES

Members of the community expressed concern about a number of issues. Initially, and as they had at the community input meeting, they object to the County's extension of Campbell Boulevard, which they fear will increase traffic in the community. Though the citizens believe this roadway project is being done to accommodate developers, it is clear the project has long been part of the County's planned capital infrastructure program. Mr. Kennedy stated that contracts have been awarded and construction has begun on the new roadway. Baltimore County is entitled, in the exercise of its police powers, to construct and expand roads, and the Campbell Boulevard project is not an obstacle to plan approval.

The other concerns raised by the community also involve matters of infrastructure. Residents noted that traffic conditions are very congested in the area, and that waiting periods during peak hours are on the rise. Even so, Baltimore County records indicate there are no "failing intersections" within the relevant area. While one citizen testified one or more signalized intersections in the vicinity is currently rated "D," the law provides that development approval may be withheld only when an intersection receives a failing (i.e., "F") grade. B.C.Z.R. §4A02.4.D.

Community members also testified that the sewage treatment facilities were inadequate

and cannot accommodate the spate of recently approved residential developments. Historically, this is a valid point, and the County's aging sanitary sewer infrastructure led to a 2005 Consent Decree with the Environmental Protection Agency (EPA), filed in the United States District Court for the District of Maryland. The Consent Decree, in addition to imposing large fines and penalties, also required Baltimore County to undertake numerous capital improvement projects to prevent what the EPA deemed an excessive number of sanitary sewer overflows.

One of the projects included in the Consent Decree was the Bird River pumping station located on Ebenezer Road, which would service the proposed development. Although Mr. Kennedy was at the time of the hearing unsure, he later confirmed, after consultation with the County's sewer design section, that the Ebenezer Road pumping station project has been completed, and that the sewer has enough capacity to accommodate the proposed development.

School overcrowding was the final issue raised by the community, and this too is a well founded concern. But as I explained at the hearing, state and county law, which I am obliged to follow, specifically permits student enrollment beyond 100% of state rated capacity (SRC).

In this case, it is only the elementary school (Vincent Farms) that is at issue. At present, the school is at 102.43% of SRC, but it is projected (when considering this and other recently approved projects) to be at 123.32% of SRC. These figures are set forth in the School Impact Analysis, which was admitted as Baltimore County Exhibit No. 2. Under the law, a school is not deemed "overcrowded" until its enrollment exceeds 115% of SRC. BCC § 32-6-103(a)(3). Even if a school is "overcrowded," if there is sufficient capacity in any school in an adjacent district to accommodate additional children, the law allows housing developments to be approved. BCC § 32-6-103(f)(3).

In this case, the DOP's School Impact Analysis showed that Chase Elementary School

could accommodate 58 additional students, which would thereby reduce Vincent Farms Elementary School to 115% of SRC. Whether or not this is sound public policy is a valid point for debate. But what is clear is that under the law development approval may be granted in these circumstances.

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 County agencies that the development plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and is entitled to approval of the redlined Development Plan.

ZONING REQUESTS

SPECIAL HEARING

In addition to the Development Plan approval, the Developer sought special hearing relief under the B.C.Z.R., Z.C.P.M. and the C.M.D.P. The first request, as noted by counsel, is essentially a “housekeeping” matter that will remove a small portion of property (known as Parcel B) previously shown on the “Sleepy Hollow” Final Development Plan (FDP) (PAI # 15-415). Developer’s Exhibit No. 9. The prior owner of Parcel B (which is now included within the Ravenhurst Development Plan) proposed to construct eight (8) additional mobile home lots on the property, while the Developer now proposes twelve (12) town homes. I believe this change is consistent with the spirit and intent of the prior approved FDP for the Sleepy Hollow mobile home park, and that the Developer satisfies the requirements set forth in B.C.Z.R. §1B01.3.A.7.

The other aspect of Special Hearing relief concerns the number of town home units permitted in any given “block” or cluster of homes. The C.M.D.P. provides for a maximum of six, but permits the ALJ, upon recommendation of the DOP, to increase that number to ten. Here, the DOP supports and recommends the requested “modification of standards,” and the Developer proposes one (1) block of eight (8) townhomes and four (4) blocks each containing seven (7) townhomes. The width of those groupings will be well below the 220' maximum allowed in the C.M.D.P. (p.30), and I believe the modification will enhance the design and appearance of the project.

As such, I will grant the requests for special hearing relief.

VARIANCE

Based upon the testimony and evidence presented, I will also grant the requests for variance relief. Under Maryland law, 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).

The Developer has met this test. Mr. Cruppi testified (via proffer in the zoning case) that the property was irregularly shaped, as is readily seen when viewing the site plan marked as Developer’s Ex. No. 10. Thus, I find that the property is unique for zoning purposes, and that the Developer would experience a practical difficulty if the regulations were strictly interpreted, since it would be unable to position the homes as requested by the DOP. Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 9th day of May, 2014, that the three-sheet redlined “**RAVENHURST PROPERTY**” Development Plan, marked and accepted into evidence as Developer’s Exhibit 2A-2C, be and is hereby **APPROVED**.

IT IS FURTHER ORDERED that the Petition for Special Hearing for: (1) an amendment (as shown on Developer’s Ex. No. 9) to the Final Development Plan (FDP) entitled "Sleepy Hollow" (PAI No. 15-415), which plat is recorded among the Land Records of Baltimore County in Plat Book 64, folio 135; and (2) from the Comprehensive Manual of Development Policies (C.M.D.P.) to grant an increase in the number of town house units in a group up to 8 (from the maximum width of 6 units per building), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows:

1. To permit setbacks from front building faces to property lines of no less than 10 ft. in lieu of the required 25 ft. for unit numbers 8-15 and 77-83;
2. To permit setbacks from rear building faces to rear property lines of no less than 25 ft. in lieu of the required 30 ft. for unit numbers 8-15 and 77-83; and
3. If necessary, to permit decks in the rear yard to extend a distance of 40% of the required rear yard setback in lieu of the maximum permitted 25%.

be and is hereby GRANTED.

The development approval and zoning relief granted herein shall be subject to the following:

1. To satisfy its Local Open Space obligations, the Developer shall construct the trail system or pay a fee-in-lieu in the amount of \$235,222.00, all as more particularly described in Baltimore County Ex. No. 1, which is attached hereto and incorporated herein.

Any appeal of this Order shall be taken in accordance with Baltimore County Code §§ 32-3-401 & 32-4-281.

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

JEB/sln