

IN RE: DEVELOPMENT PLAN HEARING & PETITIONS FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE OFFICE OF
(9014-9018 Dolfield Road)	*	ADMINISTRATIVE HEARINGS
4 th Election District	*	FOR
4 th Councilmanic District	*	BALTIMORE COUNTY
(DOLFIELD TOWNHOUSES)	*	
Blue Ocean Dolfield, LLC	*	HOH Case No. 04-0736 &
<i>Owner / Developer</i>		Zoning Case No. 2015-0194-SPHA

* * * * *

**ADMINISTRATIVE LAW JUDGE’S COMBINED
DEVELOPMENT PLAN AND ZONING 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 Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). Timothy M. Kotroco, Esquire, with Whiteford, Taylor & Preston, LLP, on behalf of Blue Ocean Dolfield, LLC, the *owner* of the subject property (hereinafter “the Developer”), submitted for approval a four-sheet redlined Development Plan (“Plan”) prepared by Colbert, Matz, & Rosenfelt, Inc., known as “Dolfield Townhouses.” In addition, the Developer has filed Petitions for Special Hearing and Variance, discussed below.

The current proposal is for 24 single family attached townhouse units on 3.30 acres of land zoned DR 10.5 (2.66 +/- acres) and DR 16 (0.77 +/- acres). The site is currently improved with two, single family detached residences. Photographs submitted show these dwellings are vacant and dilapidated, and the Developer indicated they would be razed in the near future. The remainder of the site is mostly wooded.

The project previously came through the development process proposing 20 single family attached townhouse units (16’ wide) and 16 multi-family apartment units. An Order was issued on November 15, 2013 to approve the development plan as proposed. The applicant then applied to the Design Review Committee (DRC) to request a material change to the development plan,

proposing 24 (20' wide) townhouse units and the removal of the multi-family units. The request was granted on February 10, 2015.

Details of the proposed development are more fully depicted on the redlined four-sheet Development Plan that was marked and accepted into evidence as Developer's Exhibit 2. The property was posted with the Notice of Hearing Officer's Hearing and Zoning Notice, both on March 27, 2015, 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 April 24, 2015, 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 was Roy Zimmerman. Also in attendance was Maxwell Vidaver and Richard E. Matz, both with Colbert, Matz & Rosenfelt, Inc., the consulting firm that prepared the site plan. A representative of an adjoining property owner attended the hearing to obtain additional information concerning the project.

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, Approvals and Inspections (PAI): Darryl D. Putty, Project Manager, Dennis A. Kennedy and Jean M. Tansey (Development Plans Review [DPR]), Brad Knatz, Real Estate Compliance, and Jason Seidelman (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 (DOP).

Under the County Code, 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 (with one exception noted below) indicated that the redlined Development Plan addressed any comments submitted by their agency, and they each recommended approval of the Plan. Counsel

provided a Pattern Book for the development (Baltimore County Exhibit 2), which has been approved by the DOP. Ms. Nugent presented a school analysis (Baltimore County Exhibit 1) indicating that the Owings Mills Elementary School (but not Deer Park Middle or Owings Mills High School) is overcrowded using state guidelines. Even so, the DOP's analysis shows that adjacent schools have the "spare capacity" to accommodate the necessary number of students. The Plan reflects that the Developer will provide on-site the required amount of Local Open Space, in excess of 26,000 sq. ft.

The one "open" issue at the time of the hearing concerned the storm water management plan for the site. Mr. Livingston advised that DEPS had recently received from Developer's engineer a concept storm water management plan for the project, but that it had not yet been approved. Following the hearing, DEPS advised the undersigned by letter dated April 28, 2015 that the concept storm water management plan was reviewed and approved.

In the "formal" portion of the case, the Developer presented one witness, Maxwell Vidaver, a land planner accepted as an expert. Mr. Vidaver described in detail the amended plan and he opined the Developer satisfied all Baltimore County rules and regulations.

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.

ZONING REQUESTS

As originally submitted, the Developer filed a Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to amend the last approved

Development Plan for Dolfield Townhouses. In addition and as originally filed, a Petition for Variance sought the following:

1. To permit eight (8) townhouses in a group in lieu of the permitted six (6) townhouse units in a group, pursuant to Comprehensive Manual of Development Policies (C.M.D.P.), Division 2, Section A, Residential Standards, Page 29,
2. To permit a side building face to side building face setback of 20' in lieu of the required 25' setback for units #8, #9, #16, and #17, pursuant to §§ 1B01.2.C.1.c and 504.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), and the C.M.D.P., Division II, Section A: Residential Standards Table VII),
3. To permit a 20' wide stormwater management easement to cross the 500 sq. ft. private rear yard area of units #17 - #21, pursuant to C.M.D.P., Division 2, Section A, Residential Standards, Page 28,
4. To permit a rear deck to extend into the rear yard 10' in lieu of the maximum permitted 7.5' for all units, pursuant to § 301.1 of the B.C.Z.R.,
5. To permit a front building face to public street right-of-way distance of 18' in lieu of the required 25' for all units, pursuant to § 1B01.2.C.1.c of the B.C.Z.R.,
6. To permit a side building face to public street right-of-way distance of 20' in lieu of the required 25' for unit #24, pursuant to § 1B01.2.C.1.c, and
7. For such other and further relief as the nature of this case may require.

As Mr. Vidaver noted, variance relief was granted in connection with the previous case (2014-0043-A), wherein the property was found to be unique due to its irregular shape and the minimal frontage onto Dolfield Road, which impose certain restraints on the building envelope. These findings are equally applicable in the present case, and Developer has satisfied its burden to obtain variance 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 "1st Material Amendment Dolfield Townhouses" Development Plan shall be Approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 30th day of **April, 2015**, that the **“1st MATERIAL AMENDMENT DOLFIELD TOWNHOUSES”** redlined Development Plan (4 sheets), marked and accepted into evidence as Developer’s Exhibit 2, be and is hereby APPROVED.

IT IS FURTHER ORDERED that the Amended Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to: (1) Amend the last approved Development Plan for Dolfield Townhouses; and (2) To allow a Department of Public Works waiver to permit a 4’ wide sidewalk in lieu of the required 5’ wide sidewalk on the western side of Amelia Way, be and is hereby GRANTED.

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

1. To permit eight (8) townhouses in a group in lieu of the permitted six (6) townhouse units in a group, pursuant to Comprehensive Manual of Development Policies (C.M.D.P.), Division 2, Section A, Residential Standards,
2. To permit a side building face to side building face setback of 20’ in lieu of the required 25’ setback for units #8, #9, #16, and #17, pursuant to §§ 1B01.2.C.1.c and 504.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), and the C.M.D.P., Division II, Section A: Residential Standards Table VII,
3. To permit a 13’ wide stormwater management easement to cross the 500 sq. ft. private rear yard area of units #17 - #21, and a 10’ wide homeowners association drainage and utility easement and Baltimore County access easement to cross the 500 sq. ft. private rear yard area of units # 1 - #23, pursuant to C.M.D.P., Division 2, Section A, Residential Standards,
4. To permit a rear deck to extend into the rear yard 10’ in lieu of the maximum permitted 7.5’ for all units, pursuant to § 301.1 of the B.C.Z.R.,
5. To permit a front building face to public street right-of-way distance of 18’ in lieu of the required 25’ for all units, pursuant to § 1B01.2.C.1.c of the B.C.Z.R.,
6. To permit a side building face to public street right-of-way distance of 20’ in lieu of the required 25’ for unit #24, pursuant to § 1B01.2.C.1.c,
7. To permit a sign of 5’ in lieu of the required 3’, within the triangular area bounded on two sides by the front and side street property lines of 20’ in lieu of the required 25’, pursuant to § 102.5 of the B.C.Z.R., and

8. To permit a 10' privacy fence along the tract boundary in lieu of the permitted 6',

be, and is hereby GRANTED.

The relief granted herein shall be expressly subject to the following conditions:

1. Developer shall construct at its own expense a 10' high fence between the subject property and the adjoining apartment complex known as the "Painters Mill Apartments." The Developer shall also provide landscaping along the fence to lessen its visual impact, as determined in the sole discretion of the County's Landscape Architect.
2. The Developer shall construct at its own expense a "tot lot" or playground in the northern portion of the site marked as "H.O.A. Open Space." The amenity shall be of sufficient size to accommodate the residents of the development approved herein, and is subject to the approval of the Baltimore County Landscape Architect and/or DOP.
3. The Developer shall provide at its own expense the necessary right-of-way to connect Campbell Avenue (a paper street) to Blue Ocean Way, the entire length of which shall be a public road constructed to Baltimore County standards. The Developer shall not be responsible for any costs associated with the design and/or construction of Campbell 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