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| **IN RE: DEVELOPMENT PLAN HEARING & PETITIONS FOR SPECIAL HEARING AND VARIANCE** (7301 Dogwood Road) 1st Election District 1st Council District **(HELFRICH – SECTION 2)** | * * * * | BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY |
| George & Wilhelm C. Helfrich, *Owners* GW Helfrich, LLC, *Developer* | * | **HOH Case No. 01-0489 & Zoning Case No. 2015-0273-SPHA** |

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**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."). Patricia A. Malone, Esquire, with Venable, LLP, on behalf of George and Wilhelm Helfrich, *Owners* of the subject property, and GW Helfrich, LLC, *Developer*, (hereinafter "the Developer"), submitted for approval a three-sheet redlined Development Plan ("Plan") prepared by D.S. Thaler & Associates, Inc., "Helfrich – Section 2."

The Developer is proposing 62 single-family attached dwellings on 13 +/- acres of land zoned DR 5.5. The site is currently improved with an existing structure (which will be razed) and a cell tower which is to be retained on site. The site is mostly open with some wooded areas lining the perimeters of the property boundary. The subject property is known as Section 2, and is part of an overall tract that was divided into two properties. Section 1 was developed with a townhouse community known as Granite Woods.

The Developer also has filed a Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R) seeking to amend the Special Exception area approved in Case No. 2009-0182-SPHX for the existing wireless telecommunications tower.

In addition, the Developer has filed a Petition for Variance as follows:

1. To allow a minimum side building face to side building face setback of 20 ft. in lieu of the 25 ft. setback required by B.C.Z.R. § 1B01.2.C.1.c;

2. To allow a minimum side building face setback to private road and/or a public right-of-way of 10 ft. in lieu of the 25 ft. setback required by B.C.Z.R. § 1B01.2.C.1.c;

3. To allow a minimum building face setback of 25 ft. tract boundary or lot line in lieu of the 30 ft. setback required by B.C.Z.R. § 1B01.2.C.1.c;

4. To allow a 12 ft. deep deck to extend into the required rear yard, which will exceed the 25% maximum projection permitted by B.C.Z.R. § 301.1.A;

5. To allow a community identification sign within the 50 ft. Residential Transition Area (RTA) buffer required by B.C.Z.R. § 1B01.1.B.1.c.2.;

6. To allow grading and removal of existing vegetation within the 50 ft. RTA buffer required by B.C.Z.R. § 1B01.1.B.1.c.2.;

7. To allow a deck to extend into the 75 ft. RTA setback required by B.C.Z.R. § 1B01.1.B.1.c.2.;

8. To allow the existing wireless telecommunications tower on a 2.3 +/- acre lot in lieu of the required 3 acre minimum lot size required by B.C.Z.R. § 426.9.C.2., and

9. To allow residential lots to be created within 92 ft. +/- of the existing wireless telecommunications tower in lieu of maintaining a 200 ft. setback required by B.C.Z.R. § 426.6.A.1.

Finally, the Developer requests Modification of Standards as follows:

1. To approve a modification of standards to allow up to 7 townhouse units in a row in lieu of the maximum 6 units as permitted by B.C.Z.R. § 504.2 and Comprehensive Manual of Development Policies (C.M.D.P.), Division II, Section A, pp. 28, 30; and

2. To approve a modification of standards to allow up to 12 parking spaces in a row without a landscape island in lieu of the maximum 10 spaces in a row as permitted by B.C.Z.R. § 504.2 and C.M.D.P., Division II, Section A, pp. 28, 30.

Details of the proposed development are more fully depicted on the redlined three-sheet 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 and Zoning Notice on July 30, 2015 in compliance with the regulations. The undersigned conducted the hearing on August 28, 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 David S. Thaler, Stacey A. McArthur, and Mark Vaszil, all with D.S. Thaler and Associates, Inc., the consulting firm that prepared the site plan. Patricia A. Malone, Esquire, with Venable, LLP, represented the Developer.

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 Putty for Jan M. Cook, Project Manager, Dennis A. Kennedy and Jean M. Tansey (Development Plans Review [DPR]), and Aaron Tsui (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). There were no Protestants or interested citizens in attendance at the hearing.

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 identified above indicated that the redlined Development Plan addressed any comments submitted by their agency, and they each recommended approval of the Plan. Ms. Nugent presented a school analysis (Baltimore County Exhibit 2) indicating that none of the area schools exceed allowable state rated capacity. Ms. Nugent also noted a Pattern Book for the development (Developer's Exhibit 3), was reviewed and approved by the Department of Planning. She also indicated the

Developer satisfied § 260 (residential performance standards) of the B.C.Z.R. and the compatibility requirements set forth in B.C.C. § 32-4-402, as set forth in Baltimore County Exhibit 3.

Ms. Tansey, the County's landscape architect, indicated the Developer will provide a payment of $152,737 in lieu of providing the active Local Open Space (i.e., 40,300 sq. ft.) required by the regulations. Baltimore County Exhibit 1. The Developer provides on-site a sufficient amount of "passive" open space. Ms. Tansey also approved on June 17, 2015 a schematic landscape plan for the project.

In the "formal" portion of the case, the Developer presented two witnesses. First was Stacey A. McArthur, a registered landscape architect accepted as an expert. Ms. McArthur described the project and the three sheets of the Development Plan, and also provided testimony concerning the special hearing and variance requests. Ms. McArthur explained the Developer prepared alternate development plans for standard townhomes (alternate "A") and garage townhomes (alternate "B"). She opined the Developer satisfied all Baltimore County rules and regulations, including the requirements set forth in § 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) for variance relief.

The next witness was David Thaler. Mr. Thaler's testimony concerned the existing cell tower at the site. The tower was approved by special exception in an Order dated April 22, 2009. Mr. Thaler explained that the tower would remain where it is, but that due to the subdivision of the property (which among other things will identify a 2.3 acre parcel on which the tower will be located) a variance is required from the 3 acre minimum set forth in the regulations. In a similar vein, the tower is currently situated 92' from the building (formerly used as an adult daycare facility) on site, and the plan indicates it will be 92' from a residential lot, which again requires variance relief from the 200' setback in B.C.Z.R. §426. Mr. Thaler testified that the Developer satisfied the §502.1 special exception standard, and that the tower—which has been in place for over 5 years—

would not have a detrimental impact upon the community.

This 92' setback is referenced on the plan (Dev. Ex. 7) as a "safe zone," and the County's Tower Review Committee approved the location in connection with the 2009 zoning case (Dev. Ex. 8) and notified the Developer (Ex. 9, letter dated May 20, 2015) that it did not need any further approvals for the existing tower in connection with this development project. Finally, the Developer submitted a report from the engineering firm of Black & Veatch (Dev. Ex. 10) wherein that firm opined that the tower was safe and could withstand stresses from wind and seismic forces.

ZONING REQUESTS AND ISSUES

As noted earlier, the Developer has filed Petitions for Special Hearing and Variance seeking relief from a variety of setbacks and other aspects of the Baltimore County Zoning Regulations (B.C.Z.R). Ms. McArthur reviewed each of these requests, and explained which of the proposed lots were involved with any given variance request. Both witnesses testified the site is unique and that the Developer would experience a practical difficulty if the regulations were strictly interpreted. Based on this testimony, I find that the subject property is indeed unique, and that the Developer would encounter a practical difficulty if the regulations were strictly interpreted, in that it would not be able to proceed with the project as planned. In addition, I believe the modification of standards pertaining to the maximum number of homes permitted in a group and the number of parking spaces associated therewith is subject to a similar analysis, and should also be granted.

The requirements for variance of the RTA regulations are more stringent than in the ordinary variance case under B.C.Z.R. § 307. The regulations provide a specific rule for variance of RTA, as follows:

> § 1B01.1. General use regulations in D.R. Zones.
>
> B. Dwelling-type and other supplementary use restrictions based on existing subdivision and development characteristics.
>
> 1. Residential transition areas and uses permitted therein.

c. Variance of RTA.

(1) Notwithstanding the provisions of Section 307, the hearing officer, upon the recommendation of the Departments of Public Works, Planning, Environmental Protection and Sustainability, Permits, Approvals and Inspections, Recreation and Parks, or Economic and Workforce Development, may determine the amount of RTA in cases where a single tract is more than two acres, is vacant, or contains no more than one single-family detached, semidetached or duplex dwelling.

(2) The RTA for a tract may be modified as directed by findings pursuant to § 32-4-402 and the hearing officer's hearing under Article 32, Title 4, Subtitle 2 of the Baltimore County Code. However, the hearing officer may not reduce the amount of RTA unless the officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed.

In this case, the proposed intrusions upon the RTA buffers are modest, and there is no evidence in the record to indicate any of the adjoining owners situated across Dogwood Road would in any way be "adversely impacted" by the RTA variance. There is (as shown on the plan) a substantial RTA buffer area which will be planted with trees, and a fence is also proposed at the rear of those homes along Dogwood Road. In these circumstances, I do not believe the adjoining neighbors could see – – much less be adversely impacted by – – the ground-mounted and unlit community sign or the decks which may be constructed in some or all of these townhomes along Dogwood Road. As such, the RTA variances will also be granted.

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.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **31st** day of **August, 2015**, that the **"HELFRICH – SECTION 2"** redlined

Development Plan, marked and accepted into evidence as Developer's Exhibit 1A-1C, be and is hereby APPROVED.

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking relief from § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R) to amend the Special Exception area approved in Case No. 2009-0182-SPHX for the existing wireless telecommunications tower, to include only the 2.3 acre +/- Parcel "A" shown as Developer's Exhibit 7, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R), as follows:

1. To allow a minimum side building face to side building face setback of 20 ft. in lieu of the 25 ft. setback required by B.C.Z.R. § 1B01.2.C.1.c;

2. To allow a minimum side building face setback to private road and/or a public right-of-way of 10 ft. in lieu of the 25 ft. setback required by B.C.Z.R. § 1B01.2.C.1.c;

3. To allow a minimum building face setback of 25 ft. tract boundary or lot line in lieu of the 30 ft. setback required by B.C.Z.R. § 1B01.2.C.1.c;

4. To allow a 12 ft. deep deck to extend into the required rear yard, which will exceed the 25% maximum projection permitted by B.C.Z.R. § 301.1.A;

5. To allow a community identification sign within the 50 ft. Residential Transition Area (RTA) buffer required by B.C.Z.R. § 1B01.1.B.1.c.2.;

6. To allow grading and removal of existing vegetation within the 50 ft. RTA buffer required by B.C.Z.R. § 1B01.1.B.1.c.2.;

7. To allow a deck to extend into the 75 ft. RTA setback required by B.C.Z.R. § 1B01.1.B.1.c.2.;

8. To allow the existing wireless telecommunications tower on a 2.3 +/- acre lot in lieu of the required 3 acre minimum lot size required by B.C.Z.R. § 426.9.C.2.; and

9. To allow residential lots to be created within 92 ft. +/- of the existing wireless

telecommunications tower in lieu of maintaining a 200 ft. setback required by B.C.Z.R. § 426.6.A.1,

be and is hereby GRANTED.

IT IS FURTHER ORDERED that the requests for Modification of Standards, pursuant to Division II, Section A, of the C.M.D.P., as follows:

1. To approve a modification of standards to allow up to 7 townhouse units in a row in lieu of the maximum 6 units as permitted by B.C.Z.R. § 504.2 and Comprehensive Manual of Development Policies (C.M.D.P.), Division II, Section A, pp. 28, 30; and

2. To approve a modification of standards to allow up to 12 parking spaces in a row without a landscape island in lieu of the maximum 10 spaces in a row as permitted by B.C.Z.R. § 504.2 and C.M.D.P., Division II, Section A, pp. 28, 30,

be and is hereby **GRANTED**.

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