

<b>IN RE: DEVELOPMENT PLAN HEARING &amp;</b>	*	BEFORE THE OFFICE OF
<b>PETITION FOR SPECIAL VARIANCE</b>	*	ADMINISTRATIVE HEARINGS
<b>(HONEYGO) – (4323 Forge Road)</b>	*	
11 <sup>th</sup> Election District		
5 <sup>th</sup> Councilmanic District	*	FOR
<b>(FORGE RESERVE)</b>	*	BALTIMORE COUNTY
Robert Kraft, <i>Owner</i>	*	
Patapsco Builders, LLC,	*	<b>HOH Case No. 11-0955 &amp;</b>
<i>Contract Purchaser</i>	*	<b>Zoning Case No. 2015-0080-SAH</b>
Nuttal Avenue, LLC, <i>Developer</i>	*	

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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.”). Howard Alderman, Esquire, with Levin & Gann, on behalf of Robert Kraft, the *owner* of the subject property, Patapsco Builders, LLC, the *contract purchaser*, and Nuttal Avenue, LLC, the *developer* of the subject property (hereinafter “the Developer”), submitted for approval a two-sheet redlined Development Plan (“Plan”) prepared by Little & Associates, Inc., known as “Forge Reserve.” In addition, the Developer has filed a Petition for Special Variance (Honeygo) seeking re-subdivision and amendment to the Final Development Plan (FDP) for Forge Reserve, Original Lot 31 only, which will be discussed in the Order.

The Developer proposes six (6) single family detached homes situated on Lot 31 of Forge Reserve, being a 1.9206 acre portion of the larger 20.61 acre tract of D.R. 3.5 H zoned land formerly approved as the 1<sup>st</sup> Refined (Amended) Development Plan. In other words, Lot 31 is currently improved with a single family dwelling, and the plan is to raze that dwelling and construct six (6) single family dwellings; a net gain of five (5) lots. The Development Plan for Forge Reserve and Zoning Case No. 05-047-A were approved November 4, 2004. The 1<sup>st</sup>

Amended Development Plan for Forge Reserve was approved July 27, 2007.

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 and 1B. The property was posted with the Notice of Hearing Officer's Hearing and Zoning Notice, both on December 29, 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 January 29, 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 Doug Eshelman. Also in attendance was G. Dwight Little, P.E., with Little & Associates, Inc., the consulting firm that prepared the site plan. Howard Alderman, Esquire, with Levin & Gann, appeared and represented the Developer. Jason Walsh, from the Forge Reserve Homeowners Association (HOA), attended the hearing to express certain concerns regarding the project, although he indicated that association did not oppose the project. In addition, People's Counsel Mr. Zimmerman submitted a letter outlining several legal issues, which will be discussed in 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, Approvals and Inspections (PAI): Jan Cook, Project Manager, Dennis A. Kennedy and Jean M. Tansey (Development Plans Review [DPR]), Brad Knatz, Real Estate Compliance, and Bruno Rudaitis (Office of Zoning Review). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (DEPS), and Lloyd T. Moxley 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 identified above indicated that the redlined Development Plan (marked as Developer's Exhibit No. 1A and 1B) addressed any comments submitted by their agency, and they each recommended approval of the Plan. Counsel provided a Pattern Book for the development (Developer's Exhibit 2), which according to Mr. Moxley, has been approved by the DOP. Mr. Moxley also presented a school analysis (Baltimore County Exhibit 2) indicating that the area schools are not overcrowded using state guidelines. Ms. Tansey, the County's landscape architect, indicated the Developer will provide a payment of \$17,200.00 in lieu of providing the Local Open Space (i.e., 5,000 sq. ft.) required by the regulations. Baltimore County Exhibit 1.

In the "formal" portion of the case, the Developer presented one witness, G. Dwight Little, a professional engineer accepted as an expert. Mr. Little described in detail the project, and also provided testimony concerning the "special variance" for the Honeygo allocations. Mr. Little testified the site density would allow for 72 units, while the Developer proposes to construct a total of 36 single family dwellings; i.e., 31 existing, plus five (5) additional lots as sought in this hearing. The witness explained that the prior Development Plan noted that Lot 31 would be reserved for "future development," 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. There remains to be considered two (2) zoning issues which will be discussed below.

## ZONING REQUESTS AND ISSUES

The first request seeks to amend the Final Development Plan (FDP) for Forge Reserve. Since that development has been constructed, the Developer must satisfy the requirements of B.C.Z.R. § 1B01.3.A.7. In that regard, Mr. Little opined that the proposal is consistent with the Comprehensive Manual of Development Policies (C.M.D.P), and he noted the project was supported by the DOP. Mr. Little also noted that the proposal is consistent with the earlier plan, which contained a notation that Lots 30 and 31 were reserved for future development. He also testified the proposal is consistent with the spirit and intent of the B.C.Z.R., and satisfies the requirements of B.C.Z.R. § 502.1. As such, this aspect of the Petition will be granted.

The Developer also filed a Petition for Special Variance (Honeygo) seeking relief from § 259.7.E.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), pursuant to §§ 259.8 and 4A02.4.G of the B.C.Z.R., to determine whether or not the Administrative Law Judge (ALJ) could approve a re-subdivision of 4323 Forge Road (Original Lot 31) into five additional lots (issue five authorizations) when no Belair Road Subarea authorizations are available.

As noted by Mr. Zimmerman in his January 27, 2015 correspondence, a special variance from the standards established in § 259.7 is available only if the property is “bisected by two or more subareas identified in § 259.7, or property that is the subject of a concept plan ... accepted for filing ... prior to August 4, 2003.” B.C.Z.R. § 259.8. Here, the property is not bisected by two subareas, and the concept plan for Forge Reserve was filed on or about November 13, 2003, according to a date-stamped copy of the plan in the development file (accompanied by a cover transmittal from D.S. Thaler & Associates, Inc. of the same date). As such, the “Zoning Commissioner may not grant a variance” under these circumstances (§ 259.8), and this aspect of the zoning petition will be denied.

But it may be that special variance relief is not required in the first instance. As an initial matter, Mr. Alderman contends (I think correctly) that the Honeygo Area authorizations is a matter that is considered only upon building permit application, not plan approval, per B.C.Z.R. § 259.7.B and C. More importantly, the Honeygo regulations “have no effect on any application for a building permit within the area unless one of the capital projects listed in this section is included in the annual six-year capital budget ... .” B.C.Z.R. § 259.7.R. Petitioner submitted an affidavit from Mr. Alderman’s assistant, which also references an attached e-mail from Councilman David Marks. Exhibit 2. Based on these documents, it would appear as if none of the capital projects for the Belair Road subarea (B.C.Z.R. § 259.7.E.4.b) are included in the capital budget. As such, it would appear as if the Honeygo Area regulations would not be applicable in this case, although that is a matter ultimately decided by the Director of PAI.

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 “Forge Reserve” Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 5<sup>th</sup> day of February, 2015, that the “**FORGE RESERVE**” redlined Development Plan, marked and accepted into evidence as Developer’s Exhibit 1A and 1B, be and is hereby **APPROVED**.

IT IS FURTHER ORDERED that the Final Development Plan (FDP) for Forge Reserve, Original Lot 31 ONLY, be and is hereby AMENDED to reflect the resubdivision of Lot 31 into six (6) lots, as shown on the Development Plan marked as Developer’s Exhibit 1A and 1B;

IT IS FURTHER ORDERED that the Petition for Special Variance (Honeygo) seeking relief from § 259.7.E.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), pursuant to §§ 259.8 and 4A02.4.G of the B.C.Z.R., to determine whether or not the Administrative Law Judge

(ALJ) could approve a re-subdivision of 4323 Forge Road (Original Lot 31) into five additional lots (issue five authorizations) when no Belair Road Subarea authorizations are available, be and is hereby DENIED.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw