

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
1616 Pot Spring Road		
8 th Election District	*	ADMINISTRATIVE HEARINGS
3 rd Council District		
The Preserve at Fallow Fields	*	FOR
Brooks Benhoff, LLC,	*	BALTIMORE COUNTY
<i>Owner/Developer</i>	*	HOH Case No. 08-0889

* * * * *

**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 Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). Brooks Benhoff, LLC, c/o Gaylord Brooks Realty Company, the owner of the subject property (hereinafter “the Developer”), submitted for approval a three-sheet redlined Development Plan (“Plan”) prepared by Tesseract Sites, Inc., known as “The Preserve at Fallow Fields.”

Two (2) houses exist on the property at the present time. The Developer proposes 14 new single family homes on 16.249 acres of land zoned DR 2. As such, there will be a total of 16 dwellings on the site.

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 5. The property was posted with the Notice of Hearing Officer’s Hearing on May 18, 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 Friday, June 26, 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 and property owner were Steve Smith, President, Gaylord Brooks, and John

Trueschler, President and Landscape Architect, with Tesseract Sites, Inc., the consulting firm that prepared the site plan. Jennifer R. Busse, Esquire with Whiteford, Taylor and Preston, LLLP, appeared and represented the Developer. Several citizens from the area also attended the hearing and their names are reflected on the sign-in sheets.

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 and Development Management: Jan M. 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 Jenifer Nugent 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. 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. All County agency representatives indicated the Plan addressed all

comments submitted by their agency, and they each recommended approval of the Plan. Ms. Nugent provided a Pattern Book for the development (Developer's Exhibit 2), which she indicated satisfied the residential performance standards in Baltimore County Zoning Regulations (B.C.Z.R.) § 260. She also presented a school analysis (Developer's Exhibit 3) indicating that the area schools are not overcrowded using state guidelines. Ms. Tansey, the County's landscape architect, testified that she has approved a schematic landscape plan for the project. In addition, she indicated the Developer provided sufficient land on site (i.e., 22,196 sq. ft.) to satisfy the Local Open Space regulations, which would require only 16,000 sq. ft. of open space.

In the "formal" portion of the case, the Developer presented two witnesses. First was Steve Smith, President of Gaylord Brooks. Mr. Smith explained in detail the development proposal, and described the meetings which were held to address concerns raised by the community.

John Trueschler, who is President and Landscape Architect with Tesseract Sites, Inc., was the next witness in the case. Mr. Trueschler described the proposal and addressed in detail the steps the development team took to preserve as much of the existing forest as possible. Mr. Trueschler 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.

Mr. Trueschler explained that DEPS granted a forest conservation special variance which permits the Developer to remove as many as 29 specimen trees from the site. *See*, Developer's

Exhibit 4. In a letter dated June 23, 2015, the Director of DEPS explained in detail the nature of the request and how the Developer satisfied the requirements set forth in Baltimore County Code (B.C.C.) § 33-6-116. Developer's Exhibit 4. The DEPS considered the appropriate factors in its review, and in accordance with B.C.C. § 33-6-116(g) the special variance shall be granted.

One additional issue raised by several community members concerned the private easement or lane that is situated along the southern boundary of the property. The lane is shown on the plan as "EX. DRIVEWAY," and Mr. Smith testified it is used for access to the two (2) homes on the subject property. Mr. Smith testified and the plan reflects the driveway will be "removed during construction." Developer's Exhibit 5, sheet 1. When questioned by neighbors, Mr. Smith pledged that the driveway would be removed at or near the beginning of the construction process when the Developer begins to construct Gothard Road into the community. Members of the community questioned whether the easement would be formally extinguished or abandoned after completion of the project, and Mr. Smith indicated he would need to consult with an attorney to consider the issue in greater detail. As noted above, the easement is a private agreement, and only the Circuit Court for Baltimore County (not the OAH) has jurisdiction to interpret such an instrument.

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 Preserve at Fallow Fields Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 29th day of **June, 2015**, that the "**THE PRESERVE AT FALLOW FIELDS**" redlined Development Plan, marked and accepted into evidence as Developer's Exhibit 5, be and is hereby **APPROVED**, subject to the conditions noted below.

IT IS FURTHER ORDERED that the Forest Conservation Special Variance, as discussed in detail in the letter attached to this Order, be and is hereby GRANTED.

- Developer shall within 21 days of the date hereof return to the DEPS a fully-executed copy of the letter dated June 23, 2015, which is attached hereto and incorporated by reference, indicating Developer will comply with Baltimore County's Forest Conservation Law and all terms and conditions set forth therein.

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



KEVIN KAMENETZ
County Executive

VINCENT J. GARDINA, *Director*
Department of Environmental Protection
and Sustainability

June 23, 2015

Mr. Devin Leary
Human and Rohde, Inc.
512 Virginia Avenue
Towson, Maryland 21286

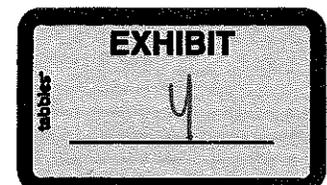
Re: The Preserve at Fallow Fields
Forest Conservation Variance
Tracking # 03-15-1930

Dear Mr. Leary:

A request for a variance from the Baltimore County Code, Article 33, Title 6, Forest Conservation Law, was received and reviewed by the Department of Environmental Protection and Sustainability (EPS). The initial request proposed to impact 30 of the 60 currently existing specimen trees on the 16.2-acre property to facilitate the creation of 16 residential lots, including two existing estate dwellings on this long-standing residential property. The applicant subsequently met with EPS staff, and revised the Forest Conservation Plan to show less impacts to specimen trees and increased retention of the higher quality forest. Consequently, a total of 29 of the 60 onsite specimen trees are considered permanently impacted as a result of this revised development proposal. Of those specimens trees to be removed, twenty eight (28) are located within existing forest, and six (6) are in poor condition.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of beneficial use of his property. The number and locations of the specimen trees as well as extent of their critical root zones would essentially preclude further development of the site and constrain access were full protection to all specimen trees to be provided. Therefore,



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although two houses exist on the property, we find that full application of the law would deprive the petitioner of a reasonable return on the property; thus, this criterion has been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. Rather than the general conditions in the neighborhood, the petitioner's plight is due largely to the widespread distribution of the 60 specimen trees on the 16.3-acre property as well as the site's topography and the historic residential uses of this estate property. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The granting of this special variance will not adversely affect the character of the surrounding neighborhood, as the limited residential development is well within the DR-2 zoning density regulations. Furthermore, the proposed architecture is consistent with the character of the houses in the neighborhood. Consequently, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. This development project is not in close proximity to any stream, wetland or floodplain. Furthermore, the project will comply with current stormwater management requirements. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions on the property prior to requesting this variance. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Although 29 specimen trees would be removed, mitigating the loss of the specimen tree outside of the forest, adequately protecting the remaining 31 specimen trees during construction, and conserving 3.5 acres of the higher quality forest onsite in a Forest Conservation Easement would be consistent with the spirit and intent of the Forest Conservation Law. Therefore, we find that this criterion has been met.

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Based on our review, this Department finds that all of the required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. Specimen tree #18, a 30-inch DBH tulip poplar in good condition located in open lawn area, shall be mitigated by paying a \$795.21 fee-in-lieu, which is based on \$0.50 per square foot of 25% of its critical root zone. The fee-in-lieu shall be paid prior to Environmental Agreement approval.
2. Impacts to the critical root zones of the specimen trees to remain shall be minimized through the use of vibratory knife root pruning and other silvicultural practices as well as additional protective measures to be detailed on the approved, final Forest Conservation Plan. Also, the sequence of operations on the sediment control plan to be approved by EPS shall reference implementation of those tree protection and stress reducing measures.
3. Prior to issuance of any Baltimore County permit, blaze orange high visibility construction fence shall be installed along the limit of disturbance wherever the limit of disturbance is within 50 feet of any remaining specimen tree or Forest Conservation Easement. The protective fence shall be illustrated on the plan view and mentioned in the sequence of operations on both the sediment control and final Forest Conservation Plans. Installation of this fence shall be inspected and approved by EPS staff prior to grading permit issuance.
4. The limits of the Forest Conservation Easement shall be permanently posted at 100-foot intervals or at any turning point with "Forest Conservation-Do Not Disturb" signs, which are available from private sign contractors. The signs must be installed prior to issuance of any permits for the development or by December 19, 2015, whichever comes first.
5. The following note must appear on all subsequent plans for this project:

"A variance was granted on June 23, 2015 to Baltimore County's Forest Conservation Law to allow permanent impacts to 29 specimen trees onsite. Conditions were placed on this variance, including paying a fee-in-lieu into the Baltimore County Forest Conservation Fund and protecting the remaining specimen trees onsite."
6. The final forest conservation plan addressing the conditions of this variance as well as the requirements of Section 33-6-110 must be submitted to EPS and approved prior to grading and sediment control plan approval.

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7. This variance approval does not exempt future development activities at this site from compliance with Baltimore County's Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

Please have the property owner sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Michael S. Kulis at (410) 887-3980.

Sincerely yours,



Vincent J. Gardina
Director

VJG/msk

- c. Marian Honeczy, Maryland DNR

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Property Owner's Representative's Signature

Date

Property Owner's/Representative's Printed Name