

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
(1630 Turkey Point Road)		
15 th Election District	*	OFFICE OF
6 th Councilmanic District		
	*	ADMINISTRATIVE HEARINGS
(OSPREY POINTE F.K.A.		
CAPE MAY COVE)	*	FOR
Glen Arm Homes, LLC, <i>Owner</i>	*	BALTIMORE COUNTY
Craftsmen Developers, LLC,		
<i>Developer/Applicant</i>	*	HOH Case No. 15-0757

* * * * *

ADMINISTRATIVE LAW JUDGE’S (ALJ)
DEVELOPMENT PLAN OPINION AND 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.”). Glen Arm Homes, LLC, the owner of the subject property, and Craftsmen Developers, LLC, the developer/applicant (hereinafter “the Developer”), submitted for approval a one-sheet redlined Development Plan (“Plan”) prepared by Little & Associates, Inc., known as “Osprey Pointe f.k.a. known as Cape May Cove.”

The Developer proposes 16 single-family dwelling units on 6.776 gross acres, more or less, of land zoned DR 3.5. The site is mostly wooded and is now unimproved; a mobile home formerly located on the property has since been removed. The subject property was approved as Minor Subdivision, Mantz Property, PAI MS #03-083M.

Details of the proposed development are more fully depicted on the redlined one-sheet Development Plan that was marked and accepted into evidence as Developer’s Exhibit 1. The property was posted with the Notice of Hearing Officer’s Hearing on January 21, 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 hearings on February 19, 2015, at 2:00 PM and April 27, 2015, 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 Conor Gilligan, Dennis Gilligan, Kris Thompson, and John Motsco, P.E., Project Manager, and George McCubbin, both with Little & Associates, Inc., the engineering firm that prepared the Plan. John Gontrum, Esquire with Whiteford, Taylor & Preston, LLP, appeared as counsel for the Developer. Several citizens from the area also attended the hearing and their names are reflected on the sign-in sheets. People's Counsel Peter Zimmerman also participated in the hearing.

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 M. Cook, Project Manager; Dennis Kennedy and Jean Tansey, Development Plans Review [DPR], Brad Knatz, Real Estate Compliance, and Gary Hucik 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, 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 rules and regulations pertaining to development and related issues. 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 any comments submitted by their agency, and they each recommended approval of the Plan. Mr. Moxley noted the DOP approved a Pattern Book for the development (Developer's Exhibit 2), which he indicated satisfied the residential performance standards in Baltimore County Zoning Regulations (B.C.Z.R.) § 260. He also presented a school analysis (Baltimore County Exhibit 2) indicating that while the elementary school in the district (Middleborough Elementary School) is currently operating above State Rated Capacity (SRC), there is sufficient capacity at several adjacent elementary schools, such that the school analysis was acceptable.

Ms. Tansey, the County's landscape architect, indicated that since the Local Open Space requirement (16,000 sq. ft.) is less than 20,000 sq. ft., a waiver was appropriate. Developer will pay a fee of \$55,040 in lieu of providing the open space. County Exhibit 1. Ms. Tansey also testified she has approved a schematic landscape plan for the project. Mr. Livingston, from DEPS, advised on the first day of the hearing that a concept stormwater management plan had not yet been approved. Mr. Livingston testified at the hearing on April 27, 2015 and advised DEPS has approved a concept stormwater management plan.

Two witnesses testified in the "formal" portion of the case. First was Lloyd Moxley of the DOP. Mr. Moxley began by identifying the Development Plan (Exhibit 1) and Pattern Book (Exhibit 2), both of which were approved by his agency. Mr. Moxley testified that in his opinion the project was in conformity with Master Plan 2020 and the Community Plan (Lower Back River Neck Community Action Plan [LBRNCAP], Exhibit 4) incorporated therein. He stated the property is located in Growth Tier 1, transect T-3 (suburban), and is inside the Urban Rural

Demarcation Line (URDL) within a priority funding area. Mr. Moxley testified the state and county encourage development in these regions, so as to reduce the impact of development upon rural areas outside of the URDL.

On cross-examination, Mr. Moxley was questioned concerning the project's conformity with the Master Plan and Community Plan. Specifically, Mr. Zimmerman directed the witness' attention to page 7, paragraph 3 of the LBRNCAP (Exhibit 4) which recommends that in calculating density for a residential development, "wetlands, buffer areas and other normally unbuildable land" should be removed from the equation. The witness did not believe this provision was applicable, and thought it should be "disregarded" since it conflicted with the manner in which density is calculated under the B.C.Z.R., growth tiers, etc.

John Motsco, a licensed professional engineer accepted as an expert, was the next witness in Developer's case. Mr. Motsco testified he prepared both the Development Plan and Pattern Book, and he visited the site with representatives from Baltimore County, who determined that adequate site lines exist for vehicles entering/exiting the site. The witness stated Developer was proposing 16 single family dwellings on 6.8 acres of D.R. 3.5 land, even though the B.C.Z.R. would permit 23.8 dwelling units. Mr. Motsco described the stormwater management devices and features shown on the plan, and advised that no zoning variances are sought. The Developer was granted a forest conservation variance (Developer's Exhibit 8B), permitting a 415 sq. ft. impact within the existing forest conservation easement, which will allow the stormwater management outfall to be located at the lowest elevation on the site. In conclusion, the witness opined Developer satisfied all Baltimore County rules and regulations. On cross-examination, Mr. Motsco testified that in his opinion the aforementioned provision of the LBRNCAP was only a "recommendation" and therefore not binding on Developer.

Several members of the community testified in opposition to the project. The community expressed displeasure with Bill 67-08, which they believe created a “loophole” allowing development in the DR 3.5 zone. Several members of the area did not believe the proposed homes were appropriate for the area, and they feared the neighborhood would lose its “rural charm.”

The protestants also believed the plan conflicted with Master Plan 2020 and the relevant community plans. At the conclusion of the hearing, counsel agreed the plan should be referred to the Planning Board, pursuant to Baltimore County Code (B.C.C.) § 32-4-231(a)(1). By letter dated April 30, 2015, the undersigned made such a referral. The Planning Board considered the matter at a public hearing, and determined that the Development Plan “conforms to the Master Plan 2020 and the adopted community plans.” This decision is binding upon the ALJ and will be incorporated into the Final Order as required by B.C.C. § 32-4-231(f).

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.

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 “Osprey Pointe f.k.a. Cape May Cove” Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 18th day of **June, 2015**, that the “**OSPREY POINTE F.K.A. CAPE MAY COVE**” redlined Development Plan, marked and accepted into evidence as Developer’s Exhibit

1, be and is hereby **APPROVED**, subject to the conditions noted below.

- The June 4, 2015 decision of the Planning Board as summarized in Ms. VanArsdale's June 15, 2015 letter which is attached hereto, is expressly incorporated into this Order.

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