

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
14 th Election District		
6 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
(7000 Rossville Boulevard)		
(FRANKLIN SQUARE MIXED-USE	*	FOR
DEVELOPMENT)		
	*	BALTIMORE COUNTY
Joseph Correlli, Jr., et al, <i>Owner</i>		
Klein Enterprises, LLC, <i>Developer</i>	*	HOH Case No. 14-0489

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**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 the development review and approval process contained in Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). David Karceski, Esquire with Venable, LLP, on behalf of Joseph Correlli, Jr., et al, *legal owners*, and Klein Enterprises, LLC, the *developer* of the subject property (hereinafter the “Developer”), submitted for approval a three-sheet redlined Development Plan (“Plan”) prepared by Matis Warfield, known as “Franklin Square Mixed-Use Development.”

The proposal involves eight (8) multi-family apartment buildings (356 units total) with ancillary clubhouse (11,112 sq. ft.), open space, and parking on 22.397 gross acres of DR 16 zoned land, a proposed Class B office building (60,000 sq. ft.) situated on 6.132 acres of BL zoned land along with the continued use of a church (1,500 seats) situated on 8.235 gross acres of OR 2 zoned land. The majority of the site is wooded with the southern portion improved with a church. There is a riparian feature on the western portion. Interstate 95 is directly to the west of the site. Details of the proposed development are more fully depicted on the redlined three-sheet Development Plan (submitted on September 12, 2014) 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 on August 14, 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 September 12, 2014, 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 was Stephen A. Warfield, P.E., with Matis Warfield, the engineering firm that prepared the site plan. David Karceski, Esquire with Venable, LLP, appeared and represented the Developer. Several citizens from the community (whose concerns will be discussed in greater detail below) attended the hearing and their names are reflected on the sign-in sheets in the file.

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 A. Kennedy and Jean M. Tansey (Development Plans Review [DPR]), LaChelle Imwiko, Real Estate Compliance, and Joseph Merrey (Office of Zoning Review). Also appearing on behalf of the County were David Lykens from the Department of Environmental Protection and Sustainability (DEPS), and Lloyd T. Moxley 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. At the hearing, each of the Baltimore County agency representatives identified above (with the exception of Messrs. Lykens and Merrey, whose concerns are addressed below) indicated that the redlined Development Plan (marked as Developer's Exhibit 1A – 1C) addressed any comments submitted by their agency, and they each recommended approval of the Plan.

DEVELOPER'S CASE

The Developer presented several witnesses, the first of which was Stephen A. Warfield, P.E., with Matis Warfield, whose firm prepared the Development Plan. Mr. Warfield, a professional engineer who was accepted as an expert, explained the project by referring to the three-sheet Development Plan. Mr. Warfield testified that the property was rezoned in 2012, which permitted the multi-family buildings on the site.

Mr. Warfield described the current stormwater management features on site, and noted that the pond situated on the church property has failed, and is providing no stormwater management for the site. This has caused flooding in adjacent homes, as several citizens noted. Mr. Warfield explained the project will comply with current regulations, and that the stormwater

management features proposed for the site will greatly reduce the runoff experienced by the neighbors. Mr. Warfield testified that surface water will be discharged from the site in a “non-erosive manner,” and that Developer will be diverting the flow of a portion of the stormwater at the request of the County, to alleviate the flooding on Trumps Mill Road. In conclusion, the witness opined the proposal meets all County Code and B.C.Z.R. requirements.

The next witness in Developer’s case was Sally Melina, a landscape architect who was accepted as an expert. Ms. Melina, who has 30 years experience in the field, described the landscaping proposed for the site, which will include the addition of at least 621 planting units, in addition to portions of the existing forest which will be preserved on site. The witness testified that Baltimore County has approved the preliminary landscaping plan, and she opined the Developer satisfied all County requirements.

Matt Bitar, who is employed by the Dolben Company (the company that would manage this property), was the next witness in Developer’s case. Mr. Bitar explained Dolben is an 85 year old company specializing in multi-family housing. He testified that he has been employed by the company for over 12 years, and described the various awards (Developer’s Exhibit 11) the company has received, as well as the successful apartment communities in Baltimore County managed by the firm. Mr. Bitar explained, in response to concerns expressed by the community, that the apartments proposed will have numerous amenities and would be marketed as an upscale property, and that the tenants would likely include employees at the nearby Franklin Square Hospital.

Logan Schutz, an architect accepted as an expert, was the next witness in Developer’s case. Mr. Schutz has 37 years experience as an architect, and he described in detail (by reference to the Pattern Book, Developer’s Exhibit 6) the proposed design and appearance of the eight (8)

residential buildings proposed. The witness explained the project is designed in such a way that residents will have access to “green” open space areas on the “inside” of the development, and that the access road would be a loop that would enclose the community. He also noted that six (6) of the eight (8) buildings would have below grade parking.

The final witness was Ken Schmid, a traffic engineer with 32 years of experience. Mr. Schmid, who was accepted as an expert, explained that he was hired to assess the impact of the proposed development upon the existing road network. Mr. Schmid examined four signalized intersections surrounding the site, and prepared a report (Developer’s Exhibit 14) wherein he determined that the proposed apartments and the 60,000 sq. ft. medical building would not cause traffic in the area to become congested or to function at unacceptable levels. He also testified the project is not located within a traffic zone with failing intersections. The State Highway Administration (SHA) submitted a letter indicating that it concurred with the findings and conclusions in Mr. Schmid’s report. Developer’s Exhibit 15.

BALTIMORE COUNTY CONCERNS

At the hearing, Mr. Lykens indicated his agency (DEPS) and the County’s Landscape Architect had not yet agreed upon the location for the walking trail proposed for the project. According to the plan, the walking trail will have a wood chip/mulch surface, and will be 3,120 feet long (i.e., approximately 6/10th of a mile). While the County supported the idea conceptually, Mr. Lykens was concerned the trail would impact environmentally sensitive areas on the western portion of the site. Following the hearing, the Developer’s engineer met with County officials and the walking trail was relocated to minimize the impact upon the forested areas of the site, as shown on the revised redlined plan (submitted on October 16, 2014) marked as Developer’s Exhibit 18A - C.

Mr. Merrey, from the Zoning Review Office, also expressed concern with the signage proposed for the project. Specifically, Mr. Merrey indicated that he could not tell, based upon his review of the Pattern Book (Developer's Exhibit 6), whether the signage proposed would be permitted as of right or would require the Developer to obtain a zoning variance at a subsequent public hearing. To address this contingency, Developer has included a note on sheet 3 of the revised redlined Development Plan (Exhibit 18 C) indicating that all signs on the site will comply with § 450 of the B.C.Z.R. or the Developer will file a petition for variance relief. A condition to similar effect will be included in the Order which follows.

Under County law, the Developer would be required to provide 356,000 sq. ft. of passive and active open space on the site. While the Developer is proposing a significant amount of open space at the project (including the walking trail and a dog park), the County has approved a waiver request for 129,398 sq. ft. of the total required. In lieu of providing the open space, the Developer shall pay to the County a fee-in-lieu of the amount of \$742,744.52, as shown on the revised waiver approval marked as Developer's Exhibit 19.

The final "open" issue concerned stormwater management pond 2, which is located in the northernmost portion of the site. This pond will have an outfall located within a forest buffer area, but the DEPS, by letter dated September 25, 2014 (Developer's Exhibit 20) approved that facility using what is known as an "alternatives analysis." The DEPS required the Developer to provide an additional 59 planting units of native trees and shrubs near the location of the outfall, and a note (no. 60) to this effect was added to sheet 1 of the revised redlined Development Plan. Developer's Exhibit 18A.

COMMUNITY CONCERNS

The community expressed concern about frequent flooding in the area, as well as traffic problems. A resident on Trumps Mill Road submitted a photo (marked as Protestants' Exhibit 1) showing the flooding of his backyard in 2011 and County documents reflect this state of affairs has existed for at least ten (10) years. Protestants' Exhibit 2. Mr. Warfield agreed that the current situation (with the failing stormwater management pond on the church property) is unacceptable, but noted the Developer would be installing state-of-the-art stormwater management features (known by the acronym E.S.D., or environmental site design) that will be a vast improvement over existing conditions.

With respect to traffic concerns, Mr. Schmid noted that the Developer will be installing curb and gutter on Trumps Mill Road that will prevent churchgoers from parking illegally on that road, and a representative at the hearing indicated the church would be willing to pave and stripe the small lot (identified as Parcel 436, Tax Account No. 1418052127) it owns on Trumps Mill Road. This will not only improve the appearance of the area, but will prevent churchgoers from parking their vehicles in a haphazard fashion on the lot, a concern noted by several area residents.

The community's concerns about traffic are understandable, and are similar to those voiced in virtually every development case. Traffic delays and congestion are simply a fact of life, and I am not at liberty to withhold development approval even if I agree that such conditions existed here. The County Council has provided that development approval can be withheld only when an intersection near the proposed development is rated at a level-of-service E or F. B.C.Z.R. § 4A02.4.D. In this case, Mr. Schmid testified that all signalized intersections within the vicinity of the project are (and will even if the project is approved) functioning at an

acceptable level of service (i.e., “C” or better) under Baltimore County standards. In addition, Maryland law requires expert testimony to rebut Mr. Schmid’s conclusions, which I found to be reasonable and convincing. Anderson v. Sawyer, 23 Md. App. 612, 618-19 (1974).

The community also complained about the lack of a dedicated left turn only lane from northbound Rossville Boulevard into the site. Mr. Schmid agreed that this would be a good idea, but he noted the County disagreed because the intersection did not satisfy certain criteria. My authority is limited to approving or disapproving development plans; I am not authorized to compel Baltimore County to take any particular action. Even so, the Developer indicated it would be willing to install the left turn lane at its own expense, and I would encourage the Developer and its counsel to convince the Baltimore County Department of Public Works of the merits of this proposed improvement.

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.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 24th day of October, 2014, that the **“FRANKLIN SQUARE MIXED-USE DEVELOPMENT PLAN”**, marked and accepted into evidence as Developer’s Exhibit

18A – 18C, be and is hereby **APPROVED**, subject to the conditions noted below:

1. The Evangel Cathedral Church of God shall pave and stripe in accordance with the B.C.Z.R. the small lot (Parcel 436 as shown on Developer's Exhibit 18 C) on Trumps Mill Road used for parking by its parishioners.
2. All signage, whether shown in the Pattern Book or proposed hereafter, shall comply with the sign regulations at B.C.Z.R. § 450 or the Developer shall obtain appropriate zoning relief for those signs not in compliance with the regulations.
3. In lieu of providing a portion of the Local Open Space required, Developer shall pay to Baltimore County a fee-in-lieu in the amount of \$742,744.52.

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