

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
(10803 Falls Road)		
8 th Election District	*	ADMINISTRATIVE HEARINGS
2 nd Council District		
(JOHNS HOPKINS AT GREEN	*	FOR
SPRING STATION, PAVILION # 3)	*	BALTIMORE COUNTY
GSS Properties, LLC, <i>Owner</i>		
Johns Hopkins Medical Management	*	HOH Case No. 08-0897
Corporation, <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.”). Jason T. Vettori, Esquire, with Smith, Gildea & Schmidt, LLC, on behalf of GSS Properties, LLC, *Owner*, and Johns Hopkins Medical Management Corporation, *Developer* of the subject property, (hereinafter “the Developer”), submitted for approval a five-sheet redlined Development Plan (“Plan”) prepared by Site Resources, Inc., known as “Johns Hopkins at Green Spring Station, Pavilion #3.”

The Developer is proposing a multi-story healthcare and surgery center with ancillary parking. The site is currently improved with a commercial recreation center (i.e., tennis facility) that is to be removed. There is an existing electric transmission line and tower immediately adjacent to the east tract boundary.

Details of the proposed development are more fully depicted on the redlined five-sheet Development Plan that was marked and accepted into evidence as Developer’s Exhibit 1. The property was posted on January 17, 2016 with the Notice of Hearing Officer’s Hearing, in compliance with the regulations. The undersigned conducted hearings on February 23, 2016 and

March 1, 2016, in 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 was Gil Wylie, President of Johns Hopkins Medical Management Corporation, and registered landscape architect Frederick Behlen, with Site Resources, Inc., the consulting firm that prepared the site plan. David Gildea, Esquire and Jason T. Vettori, Esquire appeared and represented the Developer. Richard C. Burch, Esquire, with Mudd, Harrison & Burch, LLP, appeared and represented Mullan Greenspring, LLLP, Mullan Pavilions, LP and Thomas F. Mullan, III, the adjacent property owners. In addition, Francis X. Borgerding, Jr., Esquire attended and represented Michael Merrill, an individual Protestant. On April 27, 2016, Mr. Borgerding withdrew his appearance and Michael Merrill also withdrew as a Protestant.

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, Project Manager, Dennis A. Kennedy (Development Plans Review [DPR]), LaChelle Imwiko, Real Estate Compliance, and Leonard Wasilewski (Zoning Review). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (DEPS), and Lloyd Moxley from the Department of Planning (DOP). Several members of the community attended the hearing and opposed certain aspects of the project which will be discussed below.

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. The Bureau of DPR indicated

it had approved a schematic landscape plan for the project and DEPS noted it has approved a concept stormwater management plan. Mr. Moxley, from the DOP, testified that his agency determined (as required in the O-3 zone) the project satisfies the compatibility requirements set forth at B.C.C. §32-4-402.

DEVELOPER'S CASE

In its case in chief, the Developer presented two witnesses. First was Gil Wylie, the President of Johns Hopkins Medical Management Corporation. Mr. Wylie testified that he oversaw the construction of the Greenspring campus in 1993, and that his office is located there. The witness explained that throughout the United States health care is more frequently being delivered at outpatient centers rather than major hospitals. Mr. Wylie explained that the Greenspring facility has about 250 physician providers, and Johns Hopkins wants to develop surgical specialties at the site and consolidate its radiology department on the campus. The witness testified that Johns Hopkins is making a \$70 million investment to construct this project, which would involve an 18-month buildout period. Mr. Wylie noted that Johns Hopkins has received support from the Greater Greenspring Association, Valleys Planning Council and the Meadows Community Association. Finally, the witness provided testimony concerning the Developer's compliance with each of the factors set forth at B.C.Z.R. § 438, which governs health care and surgery centers.

The next witness in Developer's case was Frederick Behlen, a landscape architect accepted as an expert. Mr. Behlen reviewed each sheet of the five-page Development Plan, which he signed and sealed. He noted that approximately five (5) sections of sewer lines offsite (across Joppa Road on the State Highway Administration [SHA] property) will need to be reinforced, as shown on sheet 1 of the Development Plan. The witness explained that this section of sewer lines might

need to be enlarged or reinforced in some other fashion, and he advised that the specific details would be determined at a later point in the construction process. With regard to B.C.Z.R. § 438, the witness noted that a “portion” of medical services will be provided on a 24/7 basis at the Greenspring campus.

Mr. Behlen next discussed the performance standards of the O-3 zone, which he opined were satisfied in this instance. The witness stated that the Developer would be providing more parking than required under the regulations, and that a variance was obtained from DEPS to allow vehicle parking within the forest buffer, as reflected in Developer’s Exhibit 17. In conclusion, the witness opined that the Development Plan complies with all Baltimore County rules and regulations.

PROTESTANTS’ CASE

Several members of the community, whose names are reflected on the sign-in sheets, testified regarding their concerns with the project. Each of the witnesses was extremely disappointed the existing tennis and racquet club facility would be razed in connection with this project. They noted that there are not many indoor tennis facilities in the surrounding area, and that the loss of the Greenspring facility would be felt across the region. Other community members expressed concern with the congested traffic conditions surrounding the project (especially the intersection of Falls and Joppa Roads, which the County designates as failing on the Basic Services Maps). They contend Falls Road was never meant to accommodate this level of development, and the community members believe that the traffic situation and congestion will only get worse if this project is approved. Of course, the Basic Services mapping standards (including the traffic and transportation standards) do not apply to a health-care and surgery center. B.C.Z.R. § 4A02.4.E.1.h. Therefore, the Plan cannot be denied based on traffic congestion.

On the first day of this hearing, Frank Borgerding, Esq. entered his appearance on behalf of Michael Merrill. Counsel identified Mr. Merrill as “an individual who plays tennis at Greenspring Racket [sic] Club.” Following a skirmish over a subpoena issued by Developer’s counsel, Messrs. Merrill and Borgerding filed on April 27, 2016 a withdrawal striking their appearance as a party and counsel respectively. The record in this case was closed on June 13, 2016, as reflected in correspondence dated June 10, 2016 countersigned by the undersigned Administrative Law Judge (ALJ). This correspondence is included with the case file.

Also on June 13, 2016 Mr. Borgerding filed a “Memorandum in Opposition” on behalf of Robert H. Bouse, Jr., a “resident of Baltimore County who lives nearby the proposed development.” Mr. Bouse did not attend either of the hearings in this case and for that reason it is possible he would not technically qualify as a “party” to those proceedings. Prince George’s Co. v. Billings, 420 Md. 84 (2011) (to protect his review rights “party need only attend the hearing, and then be ‘aggrieved’ by the eventual decision”). Even so, as argued by Mr. Borgerding in a series of letters exchanged between opposing counsel, older cases have held a party need not “personally appear or personally testify at the hearing.” See, e.g., Hertelendy v. Montgomery Co., 245 Md. 554, 567 (1967).

Rather than splitting hairs over whether Mr. Bouse is a party, I will assume he is, in recognition of Maryland’s liberal standard for attaining “party status” at an administrative hearing. This might ultimately be a Pyrric victory, since more stringent standards apply when evaluating one’s standing to seek judicial review. Indeed, in a recent case Judge Moylan identified as an “elephant in the room” an issue concerning whether a protestant challenging a planned unit development (PUD) owned or rented the property in question. Ray v. Baltimore City, 203 Md. App. 15, 23 (2012). The court was puzzled none of the parties had briefed this issue, which Judge

Moylan believed could have serious implications for whether an individual is presumptively aggrieved such that he has standing (i.e., by owning property “nearby”) or must instead prove he is specially aggrieved in a manner unlike the community at large. Id. Developer’s counsel contends Mr. Bouse does not own the property in which he resides, which may very well be a pivotal fact if he ultimately seeks judicial review in this case.

But as far as this case is concerned, nothing contained within Mr. Bouse’s post-hearing memorandum alters the conclusion Developer is entitled to have its Plan approved. The first issue identified by Mr. Bouse is the “traffic impact of the development.” Memorandum, p.1. But in Bill 37-15, the Council exempted health care and surgery centers from the Basic Services mapping standards. As such, the fact that three “F” rated intersections are in the traffic shed adjacent to the property is irrelevant as a matter of law.

The other objection raised by Mr. Bouse concerns the requirement under Bill 37-15 that a surgery center have four (4) operating rooms. Counsel correctly notes Developer only has two (2) operating rooms at the present time on the Greenspring campus. The Developer proposes to construct “five operating rooms” (Memorandum, p. 2) although it needs approval from the State of Maryland to do so. This, according to the protestant, means the Development Plan cannot be approved. I respectfully disagree.

As an initial matter, no zoning relief is sought in this case. The property is zoned O-3, which permits by right a health care and surgery center. And in nearly every commercial development project in Baltimore County, plan approval by the ALJ is contingent upon the Developer’s satisfaction of certain conditions. The court of special appeals recognized this fact and held the hearing officer’s hearing is merely the “first step” in an “ongoing process.” Monkton Preserv. Assoc. v. Gaylord Brooks, 107 Md. App. 573, 585 (1996). Development plan approval

is often conditioned upon obtaining approval from the State of Maryland for ingress/egress from a state roadway, as it is in this case.

The Developer has satisfied all County requirements and is entitled to Plan approval under B.C.C. § 32-4-229(b)(1) and the cases interpreting the development regulations. That approval will be subject to the State of Maryland's grant of a "certificate of need," which according to Mr. Wylie would then allow construction of the five (5) operating rooms proposed by Developer. The file also contains correspondence dated January 29, 2016 from the SHA indicating that agency must review and approve all road improvements and access points along Greenspring Valley and Falls Roads, both of which are state highways. Plan approval will be conditioned upon Developer obtaining the necessary SHA permits; the fact Developer does not at this time have such permits in hand does not mandate that the Plan be denied.

While I am sympathetic to the plight of area tennis enthusiasts, their concerns cannot justify denial of the Plan. Both the B.C.C. and case law make clear that if a Developer satisfies the pertinent regulations, the development plan "shall" be approved. B.C.C. § 32-4-229(b); People's Counsel v. Elm Street Dev., Inc., 172 Md. App. 690 (2007). Indeed, once County reviewing agencies indicate the plan satisfies the development regulations, it is "deemed Code-compliant in the absence of evidence to the contrary." Id. at 703. And that is what occurred here. All County agencies recommended approval of the Plan, and the Developer buttressed its case by presenting testimony from Mr. Behlen. I do not believe Protestants produced any evidence to rebut the agency recommendations and/or testimony of Mr. Behlen. As such, the Development Plan will be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 28th day of **June, 2016**, that the **"JOHNS HOPKINS AT GREEN**

SPRING STATION, PAVILION #3” redlined Development Plan in PAI Case No. 08-0897, marked and accepted into evidence as Developer’s Exhibit 1, be and is hereby **APPROVED**.

The approval granted herein is subject to the following conditions:

1. Prior to occupancy Developer must obtain from the SHA all permits and approvals necessary to allow ingress/egress from the state roadways adjacent to the site.
2. Prior to occupancy Developer must obtain approval (whether in the form of a “certificate of need” or otherwise) from the State of Maryland to have at least four (4) operating rooms at the facility.

Any appeal of this Order shall be taken in accordance with Baltimore County Code, §§ 32-3-401 and 32-4-281.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw