

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
(5750 Park Heights Avenue)		
4 th Election District	*	ADMINISTRATIVE HEARINGS
2 nd Council District		
(ASSOCIATED WAY)	*	FOR
The Associated Jewish Community	*	BALTIMORE COUNTY
Federation of Baltimore, Inc.		
<i>Owner/Developer</i>	*	HOH Case No. 04-0742

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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 Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). The Associated Jewish Community Federation of Baltimore, Inc., the owner/developer of the subject property, (hereinafter “the Developer”), submitted for approval a three-sheet redlined Development Plan (“Plan”) prepared by DS Thaler & Associates, Inc., known as “Associated Way.”

The Developer proposes 56 single-family units on 88.13 gross acres, more or less, of land zoned DR-1 and OR-1 with ancillary parking and open space. There are riparian features southeast and west of the subject 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 1A-1C. The property was posted with the Notice of Hearing Officer’s Hearing on November 10, 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 December 11, 2015, February 3, 2016 and March 11, 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 on behalf of the Developer and property owner were Mark Vaszil, Mickey Cornelius, Mark Smolarz, Ben Gershowitz, and Stacey A. McArthur, RLA, and David Thaler with DS Thaler & Associates, Inc., the consulting firm that prepared the site plan. Christopher D. Mudd, Esquire and Robert A. Hoffman, Esq. with Venable, LLP, represented the Developer. Several citizens from the area also attended the hearing and their names are reflected on the sign-in sheets. J. Carroll Holzer, Esq. represented the community Protestants.

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: Darryl Putty, Project Manager, Dennis A. Kennedy and Jean M. 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 Brett Williams from the Department of Planning (DOP).

These County agencies perform an independent and thorough review of the Development Plan as it pertains to their specific areas of concern and expertise. They 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.

Sections 32-4-227 and 32-4-228 of the B.C.C., which regulate the conduct of the Hearing Officer's Hearing, require the Administrative Law Judge (ALJ) 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. Mr. Williams presented a Pattern Book for the development (Baltimore County 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 3) indicating that the area schools are not overcrowded using state guidelines. Ms. Tansey, the County's landscape architect, indicated the Developer provided sufficient land on site to satisfy the Local Open Space regulations.

DEVELOPER'S CASE

The Developer presented two (2) witnesses in its case in chief. First was Stacey McArthur, a registered landscape architect accepted as an expert. Ms. McArthur testified she has visited the site on numerous occasions, and described the 56-acre property. She explained that 47 acres on the perimeter of the site would be in protected forest buffer and forest conservation areas. The witness testified that the Developer would adhere to current storm water management regulations, and she described a larger storm water management facility found on the east side of the property, and indicated that a number of smaller devices would be located throughout the site. Ms. McArthur testified that the County has approved both concept and development storm water management plans for the project, and she opined that the Plan marked as Developer's Exhibit 1A-1C satisfies all Baltimore County rules and regulations.

In response to questions on cross-examination, Ms. McArthur testified she was not involved with the development of the Weinberg Village project, but she did confirm that some of the storm water from the proposed 56 lots would be directed to the storm water management facilities located on the Weinberg Village property. The witness was questioned concerning a 1992 agreement which apparently rezoned the property in some respect, but she was unclear whether it had any impact upon the present case. Ms. McArthur also confirmed that the average lot size for the project would be approximately ¼ acre, and that while she was not intimately familiar with the County's rural road standards, she recognized that Garrison Forest is designated as a scenic route.

The next witness in Developer's case was Mickey Cornelius, a civil engineer accepted as an expert witness. Mr. Cornelius described his experience in preparing traffic studies and plans, and he indicated that he visited this site on two (2) occasions. His firm performed a traffic study, and took traffic counts during a morning and evening peak period. The witness testified that the study revealed all intersections would function at acceptable levels. Mr. Cornelius also explained that Baltimore County asked for an analysis of signalized intersections in the area, which was also included as part of his study. Mr. Cornelius testified that the intersection of Walnut Avenue and southbound Garrison Forest Road is the signalized section with the greatest delay, which was measured at approximately 56 seconds. With regard to the proposed development of 56 single-family dwellings, the witness stated that the project would generate approximately 50 A.M. and 60 P.M. vehicle trips. Mr. Cornelius opined that the roadways in the area are more than adequate to accommodate the traffic from this site, which he believed would add approximately 20 trips in the A.M. and P.M. period to the busiest intersection (Walnut Avenue turning left on southbound Garrison Forest Road) in the vicinity.

On cross-examination, Mr. Cornelius testified that he was engaged by the Developer in September 2014, and performed the traffic counts found in his study in October of that year. The witness stated that Baltimore County did not identify any significant “pipeline” projects in this vicinity, so he employed a 3% growth factor per year in the study.

PROTESTANTS’ CASE

In their case in chief, the Protestants presented testimony from residents in the vicinity who expressed concerns with several aspects of the proposed development. The residents believe that too many single-family dwellings were proposed for the site, and noted that most of the homes in the vicinity have one-acre lots. In addition, residents also expressed concerns that traffic in the area is currently problematic, and they worried it would become even more so if 56 new homes were constructed. Tom Finnerty, President of the Greater Greenspring Association (GGA), testified that the integrity of the 1992 agreement (referenced above) and the Associated Jewish Charities (AJC) is suspect. Mr. Finnerty believes that the AJC is unfairly trying to maximize its return from the property by crowding too many homes onto the site. He indicated that the GGA would like to see a less dense development for this site, rather than a maximum density plan abutting the Urban Rural Demarcation Line (URDL) as presently proposed.

The present (Elizabeth Buxton) and former (Theresa Moore) executive directors of the Valley’s Planning Council (VPC) both testified in the Protestants’ case. Ms. Moore described her involvement with this site through the years 2004 – 2014 and she expressed concern that the Developer did not have sufficient density to support the proposed 56 homes. Ms. Buxton testified that she has been the executive director for just the past year, and she also testified the VPC has concerns with the project. The witness indicated that the site is along the boundary of the geographical region covered by the VPC, and her organization believes there should be a less

dense transition use here to separate the urban and rural areas.

In their case, the Protestants presented as adverse witnesses several County staff reviewers, including Dennis Kennedy, James Markle, Gary Hucik, Brett Williams, Jeff Perlow and Jeff Mayhew. Each witness reviewed his agency's development plan comments, and was also asked specific questions regarding the review process. Mr. Kennedy confirmed that the "County strongly recommends" that a roundabout be constructed as shown on the Plan for this project, since it would improve traffic in the area. Mr. Markle confirmed that a concept stormwater plan has been approved for the site, and testified the Developer did not apply for environmental waivers or variances in connection with the Development Plan. Mr. Williams, from the DOP, presented a revised school impact analysis, which was marked and admitted as Baltimore County Exhibit 3. Mr. Williams also confirmed that DOP approved a pattern book for the project (admitted as County Exhibit 2) and the agency determined the Developer satisfied the design guidelines set forth at B.C.Z.R. § 260. Mr. Perlow from the Zoning Review Office provided additional testimony concerning the calculation of density for this project, and he also explained how "spirit and intent" letters had been used through the years by the Developer in expanding the scope of operations at this facility. Mr. Mayhew, the Deputy Director of the DOP, confirmed he was aware of the 1992 agreement between Baltimore County and the AJC, but testified he has no opinion concerning its enforceability, which he believed was a legal issue.

The next witness in the Protestants' case was Christopher Jakubiak, a certified planner accepted as an expert. Mr. Jakubiak testified he had reviewed the plans and various agreements at issue in this case, and he rendered an opinion that the project does not comply with the 1992 agreement (and amendments thereto) between Baltimore County and the AJC.

The final witness in the Protestants' case was James Patton, a professional engineer

accepted as an expert. Mr. Patton indicated that he also reviewed the Plans and agreements between Baltimore County and the AJC in preparing to testify at the hearing. Mr. Patton explained that the Development Plan marked as Exhibit 1A does not provide an explanation of how the entire 157- acre tract was developed through the years, which in his opinion means the Plan cannot be approved. Mr. Patton explained that without that information showing on the Plan there would be no way to tabulate how the 157-acre tract would yield sufficient density to support the 56 homes proposed here. In addition, the witness indicated that the site has just one access point for over 400 housing units, which he believed was not in compliance with the development regulations.

REBUTTAL CASE

The Developer presented one witness in its rebuttal case, David Thaler, a professional engineer accepted as an expert. Mr. Thaler testified he has been involved with this property since 1976, and he began his testimony by explaining his firm's involvement through the years in the development of the site. Mr. Thaler testified his firm prepared a master plan for the 157-acre tract, and indicated he was instrumental in obtaining the rezoning in 1992 which was designed to implement that master plan. The witness stated that he was also very familiar with the agreements between Baltimore County and the AJC, and opined that the Development Plan in this case complies with those agreements.

In particular, the witness noted the agreement requires certain buffer zones and setbacks throughout the site, which he explained have been observed. With respect to the issue of density, Mr. Thaler testified that starting with the entire 157-acre tract, one would deduct from that total the acreage used for the Weinberg Village project and the approximately 43.6 acres attributable to the special exception area shown on the Plan, which would leave a remainder of 86 acres. Of

those 86 acres, the witness explained the Developer has allotted 56 acres to support the proposed 56 single family dwellings, which in his opinion would comport with the D.R. 1 and/or O.R. 1 zoning on the property, as shown on Developer's Exhibits 9 and 10.

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. Indeed, a development plan is deemed to be code-compliant in these circumstances (i.e., where County reviewers approve the plan) and it is the protestants who must rebut this presumption. People's Counsel v. Elm Street Dev., Inc., 172 Md. App. 690, 703 (2007). In this case I do not believe Protestants presented sufficient evidence which would rebut the findings of agency reviewers (and Developer's experts), and the Plan must therefore be approved.

While many of the community witnesses and Mr. Patton expressed concern with whether the Developer established available density for the 56 homes, I am convinced by the testimony of Jeff Perlow and Mr. Thaler that the project is supported by sufficient density. Mr. Thaler presented exhibits (Developer's Exhibits 9 and 10) and testified that 56 acres was allocated to support the 56 single family dwellings, and I concur.

Much of Protestants case focused on the 1992 agreement between the AJC and Baltimore County. As an initial matter, I do not believe the OAH has "jurisdiction" to consider and construe this agreement. The court of special appeals held that an administrative agency does

not have authority to interpret and enforce a “restrictive covenant agreement” unless such an agreement is incorporated into an Opinion and Order issued by that agency. Blakehurst Life Care v. Baltimore County, 146 Md. App. 509, 520 (2002). The AJC agreement (Protestants’ Exhibit 2) was not incorporated into any prior administrative orders. Accordingly, the agreement can only be interpreted by a circuit court. Of course, as noted by Developer, even if the agreement was enforceable in this venue I am convinced by Mr. Thaler’s testimony and the exhibits he introduced that sufficient density for the 56 single family dwellings would exist by application of D.R. 1 zoning, without utilizing the higher density available under the O.R. 1 zoning.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 29th day of **March, 2016**, that the “**ASSOCIATED WAY**” redlined Development Plan, marked and accepted into evidence as Developer’s Exhibit 1A – 1C, be and is hereby **APPROVED**, subject to the conditions noted below.

IT IS FURTHER ORDERED that the Petition for Special Variance to impact approximately 800 sq. ft. of an existing Forest Conservation Easement to facilitate a traffic roundabout at the intersection of Associated Way, Garrison Forest Road and Walnut Avenue (as explained in greater detail in the Special Variance request admitted as Developer’s Exhibit 2), be and is hereby GRANTED.

1. Prior to occupancy of any of the single family dwellings, Developer shall construct at its own cost a roundabout at the intersection of Associated Way and Garrison Forest Road, as shown on Inset B on Developer’s Exhibit 1B. The roundabout must be constructed using stamped concrete, not pavers.

2. If necessary, Developer must convey to Baltimore County at no cost any right-of-way or property (along the existing "Private Road" shown on the Plan which intersects with Gwynnbrook Avenue) which may be required to provide a second means of ingress/egress from the site.

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