

<b>IN RE: DEVELOPMENT PLAN HEARING</b>	*	BEFORE THE OFFICE OF
2609 – 2615 Caves Road		
3 <sup>rd</sup> Election District	*	ADMINISTRATIVE HEARINGS
2 <sup>nd</sup> Council District		
<b>(2609 – 2615 CAVES ROAD)</b>	*	FOR
2627, LLC	*	BALTIMORE COUNTY
<i>Owner / Developer</i>		
	*	<b>HOH Case No. 03-0499</b>

\* \* \* \* \*

**ADMINISTRATIVE LAW JUDGE’S AMENDED  
DEVELOPMENT PLAN OPINION & ORDER**

By Order dated April 28, 2016, the Development Plan in the above case was disapproved. Thereafter, an Order was issued on May 17, 2016, granting Developer’s Motion for Reconsideration. As contemplated by that Order, a hearing was held at which additional testimony was taken and exhibits submitted concerning the RC-5 zone performance standards. The original Order (at pp. 20-21) stated the lack of “findings” under the RC-5 standards was the sole basis for plan disapproval.

At the reconvened hearing Developer submitted a “Performance Standards Narrative” (Dev. Exhibit 40), a 39-page document containing architectural elevations for six unique house designs, photos of adjacent dwellings and other information pertinent to the performance standards. These materials were submitted to the Department of Planning (DOP) in a timely manner by the Developer on June 16, 2016.

Lloyd Moxley of the DOP testified at the reconvened hearing and provided extensive notes (Prot. Ex. 75) on the “site planning” requirements in B.C.Z.R. §1A04.4.D. These notes contain a detailed analysis of each of the site planning factors in the performance standards. He stated the proposed dwellings would each face large open areas with substantial setbacks, such that he believed B.C.Z.R. §1A04.4.E was satisfied. Mr. Moxley testified only a minimum of tree clearing

is proposed and he believed the significant forest conservation easement on site would further the goals set forth in the “landscape design” section of the standards. B.C.Z.R. §1A04.4.F.

He indicated the Narrative primarily enabled his agency to evaluate the “buildings” requirements in B.C.Z.R. §1A04.4.G. Mr. Moxley testified the area has eclectic housing types in a wide range of sizes. He believes the proposed dwellings will feature high level materials, and he stressed it is unlikely the homes will be visible from Caves Road. Mr. Moxley opined the massing and height of the proposed dwellings can be accommodated by the site, and that the first floor footprints (between 3,000 and 4,000 square feet; *see* Dev. Ex. 44) are within the size range of nearby houses. Indeed, Mitchell Kellman (a zoning expert presented in Developer’s rebuttal case) presented documents (Dev. Ex. 43) showing that numerous 7,000-11,000 sq. ft. dwellings can be found within the Caves Valley Historic District.

Mr. Moxley testified he reviewed the Code and Comprehensive Manual of Development Policies (CMDP) concerning the requirements for panhandles, which are referenced in the RC-5 performance standards. Mr. Moxley stated panhandles are not a matter of right and that the DOP “looks for better solutions first.” Even so, he believes Developer satisfies the requirements set forth at B.C.C. §32-4-409 and the CMDP since the lots are unique and the panhandle allows the dwellings to be situated outside of the environmental buffer areas.

With regard to the other factors in the panhandle regulations, he testified the Fire Department confirmed it can safely access the lots. As such, he did not believe there would be a detrimental impact to the health, safety and welfare of the community. Mr. Moxley noted the nearest dwelling is approximately 500 feet from the proposed homes, which led him to believe the panhandle lots would not be “detrimental to adjacent properties.” B.C.C. §32-4-409(a)(1)(iii). He

testified there will not be a front-to-rear juxtaposition of the dwellings and that the access drive is about 900 ft. in length, which is less than the 1,500 ft. maximum specified in the regulations.

The Protestants presented testimony from Barton Ross, an architect, architectural historian and planner accepted as an expert. Mr. Ross opined Developer has not satisfied the performance standards, and that the Narrative (Developer's Exhibit 40) does not provide a sufficient level of specificity and detail. He believes the site design is arbitrary and the mass and scale of the homes would be a "huge blow" to the historic site, which he asserted should figure prominently in the performance standards analysis. Mr. Ross testified the proposed dwellings are "wildly out of scale" and that they should be smaller in "deference" to the Stemmer House. He indicated the houses should be of a vernacular style, which would complement the Stemmer House and the historic setting. This testimony is significant in that the witness implicitly recognized dwellings could be constructed at the site without undermining the integrity of the district, provided they were designed properly. Other witnesses in Protestants' case at the original hearing argued no dwellings should be constructed.

On cross-examination Mr. Ross testified he was not intimately familiar with the Caves Valley neighborhood, and that he drove through the Historic District in his car to evaluate the size and scale of homes in the area. He performed this analysis by visual inspection only, and did not consult tax or property records. He conceded that in inquiries of this nature (i.e., the RC-5 performance standards) there can be legitimate differences of opinions among planners and design professionals. In concluding his testimony, Mr. Ross agreed the Stemmer House is not "technically" part of the development "site."

Mr. Kellman was the final witness, and he stressed the "site" at issue for the RC-5 standards is only the lot being developed, which does not include the Stemmer House. He testified the

proposed dwellings would be located outside of the Historic Environmental Setting (HES) designated for the Stemmer House. As such, he opined the Landmarks Preservation Commission (LPC) has no authority to review or regulate the location of the proposed dwellings. Finally, the witness opined the performance standards do not evaluate or consider the presence of an historic structure or the proximity of a proposed dwelling to such a structure.

Under the zoning regulations, the Administrative Law Judge (ALJ) is required to adopt the DOP's findings before a development plan is approved unless the findings constitute an "abuse of discretion or are unsupported by the documentation and evidence" presented to the agency. B.C.Z.R. §1A04.4.C.2. Based on my review of the testimony and the narrative presented to the DOP, I do not believe that agency's findings constitute an abuse of discretion. As an initial matter, county officials are "presumed to have properly performed their duties and to have acted regularly and in a lawful manner." *People's Counsel v. Elm Street Dev., Inc.*, 172 Md. App. 690, 705 (2007).

In addition, the court of appeals has held "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Marzullo v. Kahl*, 366 Md. 158, 172 (2001). Under Maryland law, an agency will be found to have abused its discretion if (among other things) it based its decision on irrelevant factors, made a decision based on prejudice or preference rather than reason or fact, acted inconsistently with its earlier decisions on similar matters, and/or failed to provide an adequate explanation of its decision. *See, e.g., Harvey v. Marshall*, 389 Md. 243, 298 (2005). As discussed above, I believe the DOP's findings are supported by facts in the record and were (more than) adequately explained by Mr. Moxley. As such, I do not believe the agency abused its discretion.

Furthermore, I believe the DOP's findings are supported by the "Performance Standard Narrative" (Dev. Ex. 40) which was submitted to the agency. Mr. Moxley's notes and testimony reveal the DOP considered each of the factors set forth in the performance standards by referencing the Narrative prepared by the Developer. Mr. Moxley provided clear and specific testimony concerning the site planning, landscaping, open space and design elements of the project, corresponding to the various sections of the standards and the narrative. (Dev. Exhibit 40, p.2 "Table of Contents"). I believe it can be said, without fear of contradiction, that no other residential project in Baltimore County has received such extensive scrutiny for design and site planning elements prior to the approval of a development plan.

While the Protestants continue to present the issue as one involving the Stemmer House and the Caves Valley Historic District, I do not believe the County Code and zoning regulations provide support for that argument. Throughout the RC-5 performance standards there appear numerous references to the "site." Both Developer's and Protestants' witnesses agreed the "site" encompasses only the lot being developed, which in this case would exclude the Stemmer House. Protestants note the standards require a development proposal to "integrate, where possible, significant features of the site, such as...landmarks and gardens, into the site design, and retain the existing character of the features and their settings." B.C.Z.R. §1A04.4.D.1.c. Assuming the Stemmer House constitutes a "landmark" as that term is used in the standards, the section in question regulates "site design" and "site planning," which would exclude the Stemmer House which is not on the development "site." As for the "setting" of the landmark, the LPC has determined the HES designated for the Stemmer House will sufficiently protect and buffer that resource, and the ALJ and parties are bound by that determination.

Finally, and as noted in the original Order, I continue to believe the preservation or protection of the Caves Valley Historic District is not an issue or factor involved in the review and approval of this development. Baltimore County law previously required any development project to “preserve historic sites and structures.” If that was still the law it is at least arguable Protestants presented sufficient evidence to prove that requirement would not be satisfied in this case. But the County Council repealed that law (former BCC §32-4-416) and the plan cannot be denied on this basis.

THEREFORE, IT IS ORDERED this 25th day of **August, 2016**, by this Administrative Law Judge that the “2609-2615 Caves Road” Development Plan, marked and accepted into evidence as Developer’s Exhibits 1A-1C and 20A-20C, be and is hereby **APPROVED**.

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

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln