

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
and PETITION FOR VARIANCE		
W/S Hanover Pike, S	*	ZONING
Weywood Drive		
(US 30, LLC Property)	*	COMMISSIONER OF
4 th Election District		
3 rd Council District	*	BALTIMORE COUNTY
US 30, LLC	*	Case Nos. IV-677 &
Developer		2009-0004-A

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HEARING OFFICER’S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before the Hearing Officer/Zoning Commissioner for a combined public hearing on a 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.). The owner and developer, US 30, LLC (“Developer”), submitted for approval a development plan prepared by the engineering firm of Little & Associates, Inc., for property located on the west side of Hanover Pike, south of Weywood Drive, in the northern part of the County, just above Reisterstown. The subject property contains approximately 95.951 acres, more or less, zoned R.C. 4, on which the Developer proposes a total of 7 single-family dwelling lots—for one existing home and six proposed homes.

In addition to the development plan approval, the Developer has requested, pursuant to B.C.C. Section 32-4-409 (e) (2), approval of a Petition for Variance, seeking to permit a panhandle driveway of 1,807’ +/-, in lieu of the permitted 1,000’ in a R.C. zone.

The proposed development and requested zoning relief are more particularly described on the red/greenlined Development Plan submitted and marked into evidence as Developer’s Exhibit 9.

As to the history of the project, a concept plan of the proposed development was prepared and a conference held on May 27th, 2007. As the name suggests, the concept plan is a schematic representation of the proposed subdivision and is reviewed by and between representatives of the Developer and appropriate County agencies, with comments and recommendations provided at the Concept Plan Conference (CPC). Thereafter, as required, a Community Input Meeting (CIM) is scheduled during evening hours at a location near the property to provide residents of the area an opportunity to review and comment on the Plan. In this case, the CIM was held on June 6th, 2007, at the Reisterstown Public Library. Subsequently, a development plan was prepared, based on the comments received at the CPC and CIM and then submitted for further review at a Development Plan Conference (DPC), which, again, is held between the Developer's consultants and the reviewing County agencies. In this case, the DPC was held on August 27th, 2008. Following review at the DPC, comments are submitted by the appropriate County reviewing agencies and a revised development plan (the redlined development plan, which was submitted in this matter by the Developer and marked and accepted as Developer's Exhibit 2), which incorporates these comments and then submitted at the Hearing Officer's Hearing (HOH), which was scheduled and began before the undersigned on September 19th, 2008.

At the public hearing, Ron Baquol appeared as the managing member of the owner US 30, LLC, the Developer. Arnold Jablon, Esq., and Christopher Mudd, Esq., of Venable, LLP, appeared as legal counsel for the Developer. Also appearing was G. Dwight Little, Jr., P.E., with Little & Associates, Inc., the consultant who prepared the site plan for this property. S. Glenn Elseroad, President of the Hanover Road Association ("Association"), appeared at the hearing. Mr. Elseroad stated that neither he nor the Association was opposed to the proposed

development. There were no Protestants or other interested persons from the community present.

A short history is appropriate here. As explained by Mr. Jablon and Mr. Elseroad, this property prior to 2004 had been zoned R.C. 2. The Developer, the property owner then as now, proposed to rezone the subject property during the Comprehensive Zoning Map process of 2004. During the course of the CZMP process, the Developer entered into and executed an Agreement and Declaration of Covenants (“Agreement”) with the Association. Pursuant to the Agreement, the Association agreed to support the rezoning of the subject property to R.C. 4 and, in return, the Developer agreed to propose no more than seven (7) lots, each to be improved with a single-family detached house. There are a number of other conditions to which both the Developer and the Association agreed and memorialized in the Agreement, which was recorded among the Land Records of Baltimore County. The Developer introduced the Agreement into evidence and it was accepted as Developer’s Exhibit 3. Subsequent to the execution of the Agreement, the County Council rezoned the subject property from R.C. 2 to R.C. 4.

Numerous representatives of the various County agencies who reviewed the plan also attended the hearing, including the following individuals from the Department of Permits and Development Management: Colleen Kelly (Project Manager); Dennis Kennedy (Development Plans Review); Gigi Hampshire (Land Acquisition); and Bruno Rudaitis (Zoning Review Office). Also appearing on behalf of the County were Curtis Murray (Office of Planning); Bruce Gill (Department of Recreation and Parks); and David Lykens (Department of Environmental Protection and Resource Management [DEPRM]). Finally, a written comment was received from Steven D. Foster on behalf of the Maryland State Highway Administration. This and other agency remarks are contained in the case file.

Pursuant to B.C.C. Sections 32-4-227 and 228, 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. Mr. Jablon, counsel for the Developer, indicated that with the exception of DEPRM's review and approval of storm water management, there were no unresolved issues. The redlined plan, Exhibit 2, addressed all outstanding issues. I then asked the particular agencies to comment. Their responses are summarized as follows:

Department of Recreation and Parks (R & P): Bruce Gill appeared on behalf of R & P and confirmed that a waiver of the local open space requirements was requested, pursuant to B.C.C., Section 32-6-108(g) for the required 7,000 SF, or 0.16 acres of recreational area, (4,550 square feet active and 2,450 square feet passive) and approved by his department director as reflected in an approval letter submitted as Developer's Exhibit 4. Therefore, R & P recommended approval of the plan.

Department of Environmental Protection and Resource Management (DEPRM): David Lykens appeared on behalf of DEPRM and testified that the Department had reviewed the redlined plan and the only issue outstanding was concerns about storm water management. He requested that the hearing be continued. Mr. Jablon agreed. Mr. Lykens stated he would notify me after DEPRM had reviewed changes submitted by the Developer in response to DEPRM's concerns. He confirmed that the Ground Water Management and Environmental Impact Review sections had no outstanding issues.

On December 5th, 2008, Mr. Lykens notified me by memo that DEPRM had completed review of the amended plan and recommended approval. Attached to his memo was a "Revised Per Final SWM Review" Development Plan, which reflects changes to the red line plan, Developer's Exhibit 2, which are noted in green. The memo and attached greenlined plan was

introduced and accepted into evidence as Developer's Exhibit 9. The only changes between Exhibit 2 and Exhibit 9 result from the comments made by DEPRM to which the Developer responded and noted on the greenlined plan, Exhibit 9. These changes are minor modifications to grading in one area of the site and a relocation of a level spreader.

Office of Planning (OP): Curtis Murray appeared on behalf of the OP and provided the Hearing Officer with a school impact analysis for the project, introduced and accepted into evidence as Developer's Exhibit 5. Based on the results of that analysis, Mr. Murray confirmed that this project is in compliance with the provisions of B.C.C., Section 32-4-103. Mr. Murray also provided the Hearing officer with testimony that he reviewed the building elevations for the proposed dwellings and found them to be compatible with the existing dwellings and in keeping with the design standards of the Hanover Pike Corridor study. Developer's Exhibit 6. Finally, he stated that his agency supported the requested variance to permit a panhandle driveway length of 1,800 feet, and, further, supported approval of the plan.

Zoning Review: Bruno Rudaitis appeared on behalf of the Zoning Review Office and stated that his agency did not have any outstanding issues.

Bureau of Land Acquisition: Gigi Hampshire appeared on behalf of the Bureau of Land Acquisition and confirmed that all issues were addressed on the plan and, therefore, approval was recommended.

Plans Review: Dennis Kennedy appeared on behalf of the Bureau of Plans Review. According to Mr. Kennedy, his agency was in support of the waiver of the panhandle driveway length and confirmed that the plan adequately addressed his agency's comments.

Moving on to the more formal portion of the hearing, Developer's counsel called upon G. Dwight Little, Jr., P.E., to present the redlined development plan. Mr. Little was qualified and

accepted as an expert in civil engineering, the preparation of development plans, and in the development and zoning regulations of Baltimore County as they relate to development. Mr. Little gave a brief description of the re-zoning history and existing conditions of the property and surrounding area. He confirmed that the redlined plan, Exhibit 2, was prepared by his office under his supervision and Mr. Jablon moved its introduction into evidence. He then explained that the subject property consists of 95.913 +/- acres, zoned R.C. 4, and is located on Hanover Pike, Rt 30, north of Reisterstown. The property is uniquely shaped, as more particularly noted on the site plan, Exhibit 2. As Mr. Little describes the property, it “jigs and jags”. The east side of the property is Hanover Road; the southern property line is adjacent to the CSX railroad tracks and is adjacent to the Maryland National Guard compound. To the northwest are single family homes, whose owners are part of and are represented by the Association. Wetlands exist on the property, and there are streams throughout the property. The topography can best be described as rolling and to the rear of the property exist steep slopes. The only access to the subject property is by Hanover Pike. The Developer proposes a total of 7 lots, one of which will have an existing house. The proposed lots range in size from 10.984 acres to 17.835 acres. The maximum R.C. 4 building area permitted is 28.774 acres and that proposed is 28.659 acres. The minimum R.C. 4 conservancy area required is 67.139 acres and that proposed is 67.254 acres. The homes are accessed by a proposed panhandle driveway of 1,807 +/- feet, which comes off of Hanover Road, as more particularly shown and described on Exhibit 2.

Mr. Little confirmed that, while there were no issues raised regarding traffic conditions, there are no failing intersections as rated by the Department of Public Works, and that the area roads are adequate to handle the existing traffic and any anticipated increase in volume from this development. Further, he offered his opinion that, with the panhandle variance relief requested,

the proposed redlined development plan, Exhibit 2, fully complies with the zoning and development regulations contained in the B.C.C. and B.C.Z.R., and all applicable policies, rules, and regulations. He testified that the Department of Recreation and Parks had approved for a waiver of Local Open Space, which requires the Developer to pay to Baltimore County a fee-in-lieu of \$20,300. Developer's Exhibit 4. Confirming Mr. Murray's comment, Mr. Little testified that a school impact analysis was prepared, pursuant to B.C.C. Section 32-4-103, and the proposed development is in compliance with its requirements. Developer's Exhibit 5. He further confirmed that the proposed plan complies with the terms and conditions contained and agreed to by and between the Developer and the Association as memorialized in the Agreement, Exhibit 3.

The hearing then moved on to the Petition for Variance, the request to permit a panhandle driveway in excess to what is otherwise permitted. The requested relief was detailed in the petition filed and also on the redlined development plan, Exhibit 2. As stated previously, the specific relief is to permit a panhandle drive of 1,807', in lieu of the permitted 1000'. See B.C.C. Section 32-4-409(e)(2). Mr. Little testified regarding the variance and explained where, on the property, the panhandle would be located and why the variance relief would be required. Mr. Little testified that the proposed panhandle results from the location and size of the proposed lots, which were dictated by the Agreement and by the existence of the environmentally sensitive areas located on the subject property. The location of the lots will not be detrimental to the adjacent properties and they will not conflict with efforts to provide for public safety and general welfare. All of the conditions required by Section 32-4-409(a) have been satisfied. Section 32-4-409(e)(2) requires in an R.C. zone, the panhandle length may not exceed 1000'. Section 32-4-409(e)(3) permits a variance pursuant to Section 307, B.C.Z.R., to the permitted length.

The proposed development is to permit 7 lots, each to be improved with a single-family detached home. There is one existing dwelling on the property, which will be located on one of the 7 lots. In order to provide access to each of the lots, the panhandle is proposed, accessible from Hanover Road, Rt. 30. The numbers of lots, as previously indicated, are limited by the Agreement, as are the basic configurations and locations of each. The Association wanted wide open-space between the existing homes to the northwest of the subject property and the proposed lots. The panhandle, J-shaped, allows for the access to each proposed lot while providing the large lots and undeveloped area of the subject property dictated by the environmental and topographical constraints and by the Association.

The Zoning Commissioner is permitted to grant variances, pursuant to the B.C.Z.R., Section 307, upon a finding that special circumstances exist and that requiring strict compliance with the regulations would result in a practical difficulty for the developer/petitioner. Having heard the testimony and considered the requests, I find that sufficient evidence and justification exists to grant the requested variance. In my judgment, the Developer has demonstrated a desire to work with the community by providing large lots located away from the northwest tract boundary. Given the property's irregular triangular shape with no other means of access other than from Hanover Pike, the environmental constraints caused by the stream and wetlands, and the railway tracks that run along the southern portion of the property, I find that the requirements of B.C.Z.R. Section 307 are satisfied. Further, for the reasons already stated, the subject property is unique in a zoning sense. Developer's Exhibit 2, the Development Plan, more particularly shows these constraints and underscores the differences between the subject property and the properties surrounding it.

I find that a practical difficulty will result if the Developer is forced to strictly comply with B.C.C. Section 32-4-409(e)(2) in view of the Directors of the Department of Public Works and Office of Planning request to grant a variance under these circumstances.

The Baltimore County Code provides 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. Section 32-4-229. Having granted the zoning petition, I must decide whether, based on the cumulative testimony and evidence presented by the Developer and the comments of the County agencies, the Development Plan is in compliance with all applicable county, state, and federal regulations. At the close of the hearing on September 19, 2008, there was one remaining issue to be resolved. As more fully explained above, DEPRM has now recommended approval after reviewing the greenlined plan, Developer’s Exhibit 9. The Developer has now complied with all County comments and there are no outstanding issues. All the County agencies now recommend approval.

After due consideration of the testimony and evidence presented by the Developer concerning this proposal as well as the input of the various County agencies, and having addressed the only outstanding issue, I find that the redlined/greenlined US 30, LLC Development Plan accepted into evidence as Developer’s Exhibit 9 is in compliance with all applicable policies, rules and regulations, and I will approve the plan.

Pursuant to the Zoning and Development Regulations of Baltimore County as contained within the Baltimore County Zoning Regulations and in Article 32, Title 4 of the Baltimore County Code, the advertising and posting of the property, and public hearing held thereon, the redlined/greenlined US 30, LLC Development Plan, and variance relief requested, be approved.

THEREFORE, IT IS ORDERED by the Hearing Officer/Zoning Commissioner of Baltimore County, this 29th day of December 2008, that the redlined/greenlined **US 30, LLC Development Plan**, entered into evidence as Developer's Exhibit 9, be and is hereby APPROVED; and

IT IS FURTHER ORDERED, that the Petition for Variance seeking relief from Section 32-4-409(e)(2) of the Baltimore County Code to permit a panhandle driveway of 1,807' +/- in lieu of the permitted 1,000' in a R.C. zone, is hereby GRANTED; and

IT IS FURTHER ORDERED, that the Declaration of Covenants Agreement, dated August 23, 2004, by and between US 30, LLC and the Hanover Road Association (Developer's Exhibit 3), is hereby incorporated herein by reference as a condition to the approval of the development plan.

Any appeal of this decision must be taken in accordance with Section 32-4-281 of the Baltimore County Code.

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner/Hearing Officer
for Baltimore County