

**IN RE: PETITIONS FOR DEVELOPMENT  
PLAN HEARING and VARIANCE**  
N side of Forge Road, W side of  
Hidden Valley Road  
11<sup>th</sup> Election District  
5<sup>th</sup> Councilmanic District  
**(TANNER PROPERTY)**

**Forge Valley, LLC**  
*Developer/Petitioner*

\* BEFORE THE  
\* HEARING OFFICER  
\* FOR  
\* BALTIMORE COUNTY  
\* **Case Nos. XI-989  
and 2009-0136-A**

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**HEARING OFFICER’S OPINION & DEVELOPMENT PLAN ORDER**

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for Baltimore County for a public hearing in order to consider a Development Plan 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.), and to consider a related Petition for Variance filed pursuant to the Baltimore County Zoning Regulations. The owner and developer of the property, Forge Valley, LLC (the “Developer”), submitted for approval a Development Plan prepared by Merritt Development Consultants, Inc. known as the “Tanner Property” located on the north side of Forge Road, east of Belair Road and west of Hidden Valley Road, in the Perry Hall area of Baltimore County. The Developer is proposing the development of the subject property into 16 single-family detached dwelling units on approximately 16.812 acres land, more or less, zoned D.R.2H (7.4310± acres) and D.R.3.5H (9.3810± acres). The site is currently predominantly open field with a stream and associated wetlands and forest buffers traversing the western boundary of the site. Details of the plan are more fully depicted on the two page redlined Development Plan that was marked and accepted into evidence as Developer’s Exhibits 1A and 1B.

The Developer is also making a related request for variance relief from Section 259.9.F.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed public cul-de-sac

roadway of 1,330 ± feet in length in lieu of the 400 feet allowed.

The property was posted with Notice of Hearing Officer's Hearing on December 30, 2008 for 20 working days prior to the hearing, in order to notify all interested citizens of the date and location of the hearing. In addition, notice of the zoning hearing was timely posted on the property on December 30, 2008 and was timely published in *The Jeffersonian* in accordance with the County Code.

As to the history of the project, a concept plan of the proposed development was prepared and a Concept Plan Conference (CPC) was held on April 28, 2008 at 9:00 AM in the County Office Building. As the name suggests, the concept plan is a schematic representation of the proposed development and is initially reviewed by and between representatives of the Developer and the reviewing County Agencies at the CPC. Thereafter, as is also required in the development review process, notice of a Community Input Meeting (CIM) is posted and scheduled during evening hours at a location near the proposed development to provide residents of the area an opportunity to review and comment firsthand on the plan. In this case, the CIM was held on June 30, 2008 at 7:00 PM at the Perry Hall Library Meeting Room located at 9440 Belair Road, where representatives of the Developer and the County attended, as well as a number of interested persons from the community. Subsequently, a development plan is prepared, based upon the comments received at the CPC and the CIM, and the development plan is submitted for further review at a Development Plan Conference (DPC), which, again, is held between the Developer's consultants and County agency representatives to further review and scrutinize the plan. The Development Plan Conference occurred on January 7, 2009 at 9:00 AM. Both the Hearing Officer's Hearing for this proposed development and the related zoning hearing were then held on January 30, 2009 in Room 104 of the Jefferson Building located at 105 West Chesapeake Avenue, Towson, Maryland. Section 32-4-230 of the B.C.C. allows the

Developer to proceed with the hearings on the proposed development and the zoning matters in one combined Hearing Officer's Hearing.

It should be noted at this juncture that the role of each reviewing County agency in the development review and approval process is to independently and thoroughly review the development plan as it pertains to their specific area of concern and expertise. These agencies provide comments to the plan and make determinations where necessary as to whether the plan complies with applicable Federal, State, and/or County laws 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.

Appearing at the requisite public hearing in support of the Development Plan approval and Variance requests was Timothy O'Shea, Managing Member with Forge Valley LLC, the legal property owner. Howard L. Alderman, Jr., Esquire appeared as legal counsel for the Developer, as did Charles Merritt with Merritt Development Consultants, Inc., the firm that was retained to prepare the Development Plan. The hearing was also attended by several nearby members of the community, including John and Mary Schap of 9821 Richlyn Drive and Leonard Butt of 4506 Forge Road and Lilymay Butt of 4512 Forge Road.

Also in attendance were representatives of the various Baltimore County reviewing agencies, including the following individuals from the Department of Permits and Development Management: Darryl Putty (Project Manager), Dennis Kennedy (Development Plans Review), Joseph Merrey (Zoning Review Office), and Brad Knatz (Bureau of Land Acquisition). Also appearing on behalf of the County were David Lykens from the Department of Environmental Protection and Resource Management (DEPRM); Jenifer Nugent from the Office of Planning; and Bruce Gill from the Department of Recreation & Parks. In addition, written comments were received from Lt. Roland Bosley, Jr. of the Baltimore County Fire Marshal's Office and Steven

D. Foster on behalf of the Maryland State Highway Administration. These and other agency remarks are contained within the case file.

Pursuant to B.C.C. Sections 32-4-227 and 32-4-228, which regulates 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. Upon making inquiry to counsel for the Developer, Mr. Alderman, he indicated that there were issues in need of discussion with the Office of Planning and DEPRM, as well as several issues brought forth by members of the community on which he would elaborate. In particular, Mr. Alderman indicated that Mr. Butt and Ms. Butt own property on each side of the subject property where it fronts Forge Road. They inquired as to whether there would be any widening of Forge Road in front of their properties. Mr. Alderman indicated that there are no plans on the part of the Developer to widen the road in front of those properties, and that the County could do so in the future only if there was an existing easement or right-of-way, or if the County acquired the property along the road frontage by way of condemnation. Mr. Butt also questioned why an existing 27 inch storm drain pipe running along his property, as well as a 6 inch connecting drain line was not reflected on this copy of the plan. Mr. Alderman then pointed out that the redlined Development Plan included those items.

Mr. Alderman then discussed the DEPRM issues and the issues concerning proposed Lot 5. As shown on the redlined Development Plan, Lot 5 is situated in an area that is also encumbered by a substantial right-of-way easement belonging to the United States of America. The easement goes through the proposed building envelope for Lot 5. Mr. Alderman explained that in this case, the Developer has requested a forest buffer variance so the proposed home can be situated further back, out of the right-of-way. On the other hand, the Office of Planning has indicated it is unable to give its approval of the plan, having determined that the presence of the right-of-way prevents compliance with the Residential Performance Standards set forth in

Section 260 of the B.C.Z.R. Mr. Alderman also noted that the Developer's forest conservation and storm water management proposal is still pending with Glenn Shaffer at DEPRM.

Finally, Mr. Alderman indicated that the aforementioned issues with Lot 5 can be addressed with a redline detail that was made to the plan at the outset of the hearing. He referred to the "Special Note Applicable to Lot 5 Only" that was affixed to the plan. It states as follows:

Lot 5 as shown herein shall remain un-buildable until such time as the United States of America right-of-way running through it is extinguished and a building permit is issued for a dwelling located thereon meeting applicable front averaging setbacks and applicable Residential Performance Standards of Baltimore County.

In the event the right-of-way is discontinued or extinguished, the proposed dwelling on Lot 5 can then be moved forward to meet the front averaging requirements, and the requested forest buffer variance will no longer be necessary.<sup>1</sup> In addition, the absence of the right-of-way should also alleviate any objections to this lot by the Planning Office.

I then inquired as to the particular County agencies and asked that they state whether there were any outstanding issues applicable to their particular agency. Their responses are summarized below:

Recreation and Parks: Bruce Gill appeared on behalf of the Department of Recreation and Parks and indicated that as originally submitted, the required local open space for the 16 units is 16,000 square feet or 0.37 ± acres, with 10,400 square feet active and 5,600 square feet passive. Mr. Gill then indicated that his office received a request from the Developer for a waiver of Local Open Space. Pursuant to a letter dated January 5, 2009 from the Department of Recreation and Parks to the Developer's consultant, Mr. Merritt, the request for waiver was granted and a fee in lieu of \$85,420.80 must be paid to Baltimore County prior to recordation of the record plat. A copy of the letter was marked and accepted into evidence as Baltimore County

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<sup>1</sup> Mr. Alderman indicated on behalf of the Developer that given the redlined "Special Note Applicable to Lot 5 Only," and its potential ramifications, the Developer will withdraw its forest buffer variance with DEPRM.

Exhibit 2. Hence, his department recommended approval of the redlined Development Plan.

Development Plans Review (Public Works): Dennis Kennedy appeared on behalf of the Bureau of Development Plans Review. Mr. Kennedy confirmed that the Developer's redlined Development Plan meets all of his department's requirements and comments. Mr. Kennedy also did state, however, that this site is within a moratorium area for sewer services, which does not necessarily affect plan approval at this stage, but affects acquisition of building permits. He also indicated that the moratorium could be lifted in the event the Developer is willing to financially contribute to the reclamation of the sewer system in this area. Notwithstanding the moratorium, Mr. Kennedy indicated that his agency recommends approval of the redlined Development Plan.

Department of Environmental Protection and Resource Management (DEPRM): David Lykens appeared on behalf of DEPRM. Mr. Lykens indicated that there were several outstanding issues as of this date. He indicated that some changes have been made to the plan at DEPRM's request and other submittals were still under review. In particular, the storm water management plan was submitted but has not yet been reviewed and approved by the Environmental Impact section. He also indicated the requested forest buffer variance for Lot 5 has not yet been reviewed or evaluated, but was encouraged by the Developer's decision to withdraw that variance in light of the "Special Note Applicable to Lot 5 Only" that was affixed to the plan, which should preclude the need for a forest buffer variance. At this juncture, Mr. Lykens indicated his department would not oppose keeping the record of this case open for a period of time for potential resolution of the DEPRM issues.

Office of Zoning Review: Joseph Merrey appeared on behalf of the Zoning Review Office. Mr. Merrey indicated that all of his office's comments had been addressed and that the only outstanding issue was the Developer's request for variance. In the event the requested variance pertaining to the length of the proposed cul-de-sac is granted, Mr. Merrey indicated his

Office would recommend approval of the redlined Development Plan.

Land Acquisition: Brad Knatz appeared on behalf of the Bureau of Land Acquisition. Mr. Knatz indicated that the all issues had been satisfied from his agency's perspective, and recommended approval of the redlined Development Plan, subject to the Developer's submission of appropriate documents from the Right-of-Way Manual, including the following: Document A – Drainage and Utility Easement, Document K – Forest Buffer Plat, Document O – Fee Simple Deed LOS Flood SWM, Document R – Fee Simple Deed Plat, and Document S – Reversible Slope Easement.

Planning Office: Jenifer Nugent appeared on behalf of the Office of Planning. Ms. Nugent indicated that initially, she was prepared to testify that the current right-of-way being held by the United States of America that would run through the building envelope of Lot 5 precluded her agency's approval of Lot 5 as complying with the Residential Performance Standards, and therefore, her agency could not recommend approval of the Development Plan. However, upon being given a copy of the proposed redline note for Lot 5 entitled "Special Note Applicable to Lot 5 Only," indicating that Lot 5 could not be built on until such time as the right-of-way was extinguished and a building permit issued for a dwelling on that lot, Ms. Nugent indicated that this issue would no longer preclude plan approval. She also commented that if the right-of-way were ever extinguished, a proposed dwelling could actually be moved closer to the road and be more consistent with the averaging for the front yard setback of the proposed homes. Mr. Alderman, the Developer's attorney, also commented that this is why it would no longer be necessary for the Developer to request the forest buffer variance from DEPRM.

As to the pattern book, Ms. Nugent indicated the Developer's submission was acceptable, except that Lot 5's compliance with the Residential Performance Standards of Section 260 of the B.C.Z.R. would need to be evaluated by her Office in the future if or when the aforementioned

right-of-way is extinguished and the Developer seeks a building permit for that lot. Ms. Nugent also indicated the School Impact Analysis showed the projected enrollment for the elementary and middle schools was below the percentage of State Rated Capacity (SRC) threshold of 115%, but that the high school was at 116%; however, Ms. Nugent pointed out that there was sufficient capacity at adjacent high schools in the district, indicating compliance with the state's adequate public facilities law. A copy of the School Impact Analysis was marked and accepted into evidence as Baltimore County Exhibit 1A. A copy of a memo explaining the spare capacity at adjacent high schools was marked and accepted into evidence as Baltimore County Exhibit 1B.

Moving now to the more formal portion of the hearing, Mr. Alderman proffered the testimony of Charles Merritt in presenting the redlined Development Plan. Mr. Merritt is a land use expert with Merritt Development Consultants, Inc. He is familiar with the Baltimore County Zoning Regulations and the development regulations contained within the County Code, as well as the Zoning Commissioner's Policy Manual. Mr. Merritt was offered and accepted as an expert in the areas of planning, zoning, land use, development, and the necessary zoning and land use requirements in Baltimore County.

He was involved in the evaluation of the subject site and assisted in the preparation of the Development Plan from the concept plan stage through the development review process, as well as the related request for zoning relief. Mr. Merritt's associate, Geoffrey A. Tizard, prepared and sealed the redlined Development Plan that was marked and accepted into evidence as Developer's Exhibits 1A and 1B. As shown on the plan, the subject property is an irregular-shaped property and consists of approximately 16.812 acres land, more or less, zoned D.R.2H (7.4310± acres) and D.R.3.5H (9.3810± acres). The "H" designation represents the Honeygo District Overlay as set forth in Section 259 of the B.C.Z.R. This section provides standards for this overlay that are in addition to, modifications of, and exceptions from the standards required



by the underlying zoning classification in the area.

The Developer proposes subdividing the property into 16 lots with single-family homes. Access to the property would be from Forge Road via a proposed cul-de-sac to be known as Forge Valley Court, located almost directly opposite of the existing Forge Crossing Court to the south. The lots would have access to public water and sewer services. Adjacent to the subject property to the west is a development within Richlyn Drive, Carlyn Road, and Medolin Road. In particular, Carlyn Road runs perpendicular to the subject property and appears to terminate at or near the property line. At one time earlier in the concept plan process, consideration was given to possibly connecting proposed Forge Valley Court with Carlyn Road, making Carlyn Road a through street to Forge Road; however, at the CIM, the community expressed that they did not desire to have the roads connected. Moreover, it was determined that extending the road would encroach into some environmental features, including forest buffers, and would necessitate a stream crossing. As such, this idea was not pursued as a potential option.

As a result, the Developer instead lengthened the proposed cul-de-sac to approximately 1,330 feet. Because of the lengthening of the cul-de-sac, the Developer has also requested variance relief from Section 259.9.F.4 of the B.C.Z.R. As indicated above, this section applies to the Honeygo District and states that a cul-de-sac or court shall not exceed 400 feet unless, as determined by the Director of Environmental Protection and Resource Management, a longer length is needed to prevent encroachment on protected areas. During the hearing, Mr. Alderman elicited testimony from Mr. Lykens with DEPRM concerning the potential environmental impacts of connecting the proposed development to Carlyn Road. Mr. Lykens confirmed that the impacts would be lessened by allowing the cul-de-sac of 1,330 feet in length versus connecting with Carlyn Road. In addition, the zoning file contains a letter dated January 16, 2009 from the Perry Hall Improvement Association, Inc. (PHIA). In the letter, David Marks, President of

PHIA, and Debra Beaty, Vice President, indicate that residents of the nearby neighborhoods to the east expressed concerns about the potential loss of mature trees should the development be linked through Carlyn Road. To the extent the variance avoids the destruction of these trees, as well as access from Carlyn Road, the PHIA would not oppose the variance request.

Mr. Alderman then proffered that if called to testify, Mr. Merritt would state that, but for the outstanding DEPRM issues, the redlined Development Plan consisting of Page 1 and Page 2 has been presented to County agency representatives and has addressed all of those agencies' comments and resolved any and all outstanding issues. In his opinion, based on his professional knowledge and experience and notwithstanding the aforementioned DEPRM issues, the redlined Development Plan consisting of Page 1 and Page 2 that was marked and accepted into evidence as Developer's Exhibits 1A and 1B, respectively, fully complies with the development regulations, rules and policies contained in the Baltimore County Zoning Regulations (B.C.Z.R.) and the Baltimore County Code (B.C.C.).

On April 9, 2009, the undersigned received an Inter-Office Correspondence from David Lykens, Development Coordinator with DEPRM, concerning his Department's review of the environmental information associated with the proposed development. Page 1 of the redlined Development Plan was altered slightly to reflect Environmental Impact Review Section changes to the area of the forest buffer easement (which are seen on the revised redlined Development Plan as highlighted in yellow), but is otherwise unchanged from the plan that was presented at the hearing. Mr. Lykens also indicates that DEPRM can now recommend approval of Page 1 of the revised redlined Development Plan, which shall be marked and accepted into evidence as Developer's Exhibit 1C.

As to the request for variance relief, I am inclined to grant this request to extend the proposed cul-de-sac to approximately 1,330 feet in lieu of the maximum allowed 400 feet. In my

view, the variance relief is driven by the nearby community's desire, and the practical necessity of a cul-de-sac versus linking the development by way of a connection to adjacent Carlyn Road. It is clear that extending the length of the cul-de-sac will lessen the environmental impacts of the development by requiring less encroachment into environmentally sensitive areas. This was confirmed by Mr. Lykens with DEPRM. I also note that the existing environmental impacts and features of the property limit the development potential and density use to approximately 34% of what would otherwise be permitted in the Zone.

As to the request for development plan approval, Section 32-4-229 of the B.C.C. clearly provides that the "Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations." After due consideration of the testimony and evidence presented and confirmation from the various County agencies that the development plan proposal satisfies those agencies' requirements, I find that Development Plan -- consisting collectively as Page 1 of the redlined Development Plan accepted into evidence as Developer's Exhibit 1A, Page 2 of the redlined Development Plan accepted into evidence as Developer's Exhibit 1B, and Page 1 of the revised redlined Development Plan accepted into evidence as Developer's Exhibit 1C -- is in compliance with the Baltimore County Code and all applicable policies, rules, and regulations.

Therefore, having identified no remaining unresolved or outstanding issues that would prevent development plan approval, the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the Development Plan.

In conclusion, pursuant to the advertisement, posting of the property, and public hearing held thereon, the requirements of which are contained in Article 32, Title 4, of the Baltimore County Code, and after considering the testimony and evidence offered at the hearing, the variance request shall be granted and the Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, this 21<sup>st</sup> day of April, 2009 that the request for Variance from Section 259.9.F.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed public cul-de-sac roadway of 1,330± feet in length in lieu of the 400 feet allowed be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Development Plan consisting collectively as Page 1 of the redlined Development Plan accepted into evidence as Developer's Exhibit 1A, Page 2 of the redlined Development Plan accepted into evidence as Developer's Exhibit 1B, and Page 1 of the revised redlined Development Plan accepted into evidence as Developer's Exhibit 1C, for the property known as the "Tanner Property," be and is hereby APPROVED, subject to the following:

1. If in the future the United States of America right-of-way running through proposed Lot 5 becomes extinguished and the Developer seeks a building permit for Lot 5 consistent with the "Special Note Applicable to Lot 5 Only" shown on Developer's Exhibit 1A, the Office of Planning shall evaluate and make a determination as to Lot 5's compliance with the Residential Performance Standards of Section 260 of the B.C.Z.R. prior to the issuance of any building permit for Lot 5.

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

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner/Hearing Officer  
for Baltimore County

THB:pz