

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
AND PETITION FOR VARIANCE		
9895 Belair Road	*	OFFICE OF
NE side of Belair Road, 100' N		
of the c/l of Perry Hall Road	*	ADMINISTRATIVE HEARINGS
11 th Election District		
5 th Councilmanic District	*	FOR BALTIMORE COUNTY
Gunpowder Farms, LLC	*	HOH Case No. 11-1109 and
<i>Applicant/Developer</i>		Zoning Case No. 2012-0194-A
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**ADMINISTRATIVE LAW JUDGE’S COMBINED ZONING AND
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 the development review and approval process contained in Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). The request for Development Plan approval was filed by Gunpowder Farms, LLC, and the owners of the property, Kenneth E. and Deloris E. Schroeder. A four page Development Plan which was submitted and accepted into evidence as Developer’s Exhibit 1A through 1D was prepared by Morris & Ritchie, Associates, Inc., and shows the development of the subject property into 48 single family lots. The property which is the subject of this Development Plan approval request consists of 21.4 acres, more or less, and is zoned BR 3.5H (Honeygo) with a very small portion zoned DR 3.5. The property is located on the east side of Belair Road opposite from its intersection with Perry Hall Road in the Honeygo area of Baltimore County.

Appearing at the hearing on behalf of the Applicant were David Altfeld and Ronald Schaftel, principals with Gunpowder Farms LLC, the Developer of the subject property. Also attending on behalf of the Development team were Dean Hoover, Matt Bishop and Josh Sharon all

representatives of Morris & Ritchie, Associates, Inc., the engineers, planners and landscape architects who prepared the Development Plan. Ken Schmid appeared as a traffic expert on behalf of the Developer, and the Developer was represented by David H. Karceski, Esquire and Christopher Mudd, Esquire.

As is usual and customary, various representatives of the Baltimore County reviewing agencies also attended the hearing namely, from the Department of Permits and Development Management: Jan Cook (Project Manager), Dennis Kennedy (Development Plans Review), Bruno Rudaitis (Office of Zoning Review), and LaChelle Imwiko (Bureau of Land Acquisition). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Resource Management (“DEPRM”); and Jenifer Nugent from the Department of Planning. In addition, written comments were received from the Baltimore County Fire Marshal’s Office and the Maryland State Highway Administration. These and other agency remarks are contained within the case file.

Several residents from the surrounding community appeared out of concern for and in opposition to the subject development. Those citizens placed their names on the Citizen’s Sign-In Sheet. Specifically appearing at the hearing were Robert and Susan Rye, property owners whose land is located adjacent to and immediately south of the property to be developed; Marie Beard, whose property abuts the development immediately to the north; Richard Nolet, Carole Nolet and Norma Burckhard, all residing along Belair Road, also were in attendance. Mark Warren, who resides within the adjacent residential community located on Gunforge Road also attended the hearing.

It should be noted that in addition to the requested approval of this Development Plan, the Developer has also filed a Petition for Variance. That Variance was filed in case 2012-0194-A

where in the Developer, Gunpowder Farms LLC, and the legal owners, Kenneth E. and Deloris E. Schroeder, are requesting variance relief from Section 259.9.B.4.e of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a residential dwelling setback of 44 feet to a rear property line in lieu of the required 50 feet (Lot No. 48). This variance request pertains to Lot 48 only.

The property was posted with the Notice of Hearing Officer’s Hearing on March 1, 2012 for 20 working days prior to the hearing held on March 29, 2012 in order to inform all interested citizens of the date and location of the hearing. In addition, notice of the zoning hearing was posted on the property on March 13, 2012 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 July 26, 2011 at 10:00 AM in the County Office Building. As the name suggests, the concept plan is a schematic representation of the proposed development and was initially reviewed by 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”) was posted and scheduled during evening hours at a location near the proposed development. The CIM provides residents of the area an opportunity to review and comment firsthand on the Concept Plan. In this case, the CIM was held on August 24, 2011 at 7:00 PM at the Perry Hall Public Library located at 9685 Honeygo Boulevard, where representatives of the Developer and the County attended, as well as a number of interested persons from the community. Subsequently, a Development Plan was prepared based upon the comments received at the CPC and the CIM, and the Development Plan was submitted for further review at a Development Plan Conference (“DPC”). At the DPC, the Developer’s

consultants and County agency representatives further reviewed and scrutinized the plan. The DPC occurred on March 7, 2012 at 9:00 AM in the County Office Building. Thereafter, a Hearing Officer's Hearing was scheduled and convened on March 29, 2012 in Room 205 of the Jefferson Building located at 105 West Chesapeake Avenue in Towson.

It should be noted at this juncture that the role of the reviewing County agencies in the development review and approval process is to perform an independent and thorough review of the Development Plan as it pertains to their specific areas of concern and expertise. The agencies specifically 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. It should also be noted that 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.

Pursuant to Sections 32-4-227 and 32-4-228 of the B.C.C., 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.

At this preliminary stage of the Hearing Officer's Hearing, the Developer through Matt Bishop, a landscape architect employed by Morris & Ritchie, Associates, Inc., was called to testify and presented testimony and evidence regarding the Plan to develop the property. Mr. Bishop was accepted as an expert based on his credentials and experience. The Development Plan marked as Developer's Exhibit 1A through 1D was introduced and accepted into evidence through the testimony of Mr. Bishop. Mr. Bishop went on further to testify that the subject property will have

direct access to Belair Road, consists of 21.4 acres and is zoned DR 3.5H. The zoning taking into account the acreage of the site would yield 74 potential single family dwellings. However, due to site constraints, road networks, stormwater management areas, open space and forest conservation and forest buffer easements, the Developer is proposing only 48 single family homes on the subject property. The Developer as required by Baltimore County Code proposes two future connections to the properties located to the north and south of the property to be developed as is shown on the Development Plan. Both passive and active open space have been shown on site as well as two stormwater management facilities.

Mr. Bishop also testified that the County Council recently passed Council Bill No. 11-12 which among other things altered the rear yard setbacks for single family homes to be developed in the Honeygo Overlay District. The importance of this new Bill which became effective April 2, 2012, is that it would obviate the need for a variance for the house to be constructed on Lot 48. However, out of an abundance of caution, and given the timing of the effective date of the new Bill, the Developer did put forward testimony and evidence on the variance petition which was filed as a corollary case to this Development Plan.

Finally, during the introduction of the Development Plan, Mr. Bishop did testify regarding a waiver from Public Works standards relating to the paving width of the street system that will service these 48 homes. At the present time, the Developer proposes to construct streets within the subdivision that consist of a 28 foot wide paved section on a 50 foot right-of-way. Normal standards require a 30 foot paved section on a 50 foot right-of-way. The Developer has requested a waiver from Public Works to allow the paved section of the road to be 28 feet in width in lieu of the required 30 feet, and that waiver request has been recommended for approval by the Director of Public Works.

After the introduction of the Development Plan through Mr. Bishop, the County representatives who were in attendance at the hearing were called upon to testify regarding their particular agencies' position on this Development Plan.

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: Comments were received from the State Highway Administration (SHA) dated February 28, 2012. The SHA stated in their comment that an access permit is required for access to Belair Road. SHA has requested a revised traffic study and will be reviewing the access permit after the issuance of this decision. The decision to allow access to Rt. 1 is a separate process from this Hearing Officer's Hearing, and will be handled solely by the SHA.

Particular County agencies were then asked to state whether they had any outstanding issues, and the responses are summarized below:

Planning Office: Jenifer Nugent appeared on behalf of the Department of Planning. Ms. Nugent indicated that her department has no objection to the Plan. She also stated that the Pattern Book (Developer's Exhibit 4) has been reviewed, approved and accepted by her Department. She also stated that the School Impact Analysis, accepted as Developer's Exhibit 5, has been accepted by her Department. Given this, she recommended approval of the Development Plan.

DEPS: Jeff Livingston appeared on behalf of DEPS, indicating that his Department has no issues with the Plan. The project has been reviewed by Ground Water Management and Environmental Impact Review and there are no open issues regarding this proposed Development. He recommended approval of the Plan.

Recreation and Parks: Bruce Gill appeared on behalf of the Department of Recreation and Parks and indicated that the Developer has met all requirements pertaining to Local Open Space,

both active and passive. With no other open issues, Mr. Gill's Department recommended approval of the 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 red-lined plan met all of his Department's requirements and comments, and that his department recommended approval of the redlined Development Plan. He also stated that the Director of Public works supported the granting of the waiver to allow a paving width of 28 feet in lieu of 30 feet.

Office of Zoning Review: Bruno Rudaitis appeared on behalf of the Office of Zoning Review. Mr. Rudaitis stated that his office had no outstanding issues with the Plan, and the recommended approval of same. He also stated that with the passage of Bill 11-12 the variance request will be rendered moot.

Land Acquisition: LaChelle Imwiko appeared on behalf of the Bureau of Land Acquisition, and indicated that they have no objection to the Plan and recommended approval of same.

As stated previously, several residents from the surrounding community appeared out of concern and in opposition to the development proposal. Mrs. Marie Beard who resides at 9909 Belair Road, the property which is immediately to the north of the property to be developed, testified that she does not like the method by which the Developer has proposed to provide a road connection to her property. As shown on Developer's Exhibit 1A, the road system provides a connection to Mrs. Beard's property at the far northeastern corner of the property adjacent to Lot 18. Mrs. Beard stated she would have preferred the road to come through at the approximate location of Lot 21.

Providing testimony in response to her concern was Mr. Dennis Kennedy, a representative from the Department of Public Works. Public Works required that the Developer provide a connection at this particular point in order for it to line up with the existing Forge Park Road that currently terminates on the other side of Mrs. Beard's property. If ever connected in the future, a new section of roadway would simply connect the two terminating points with a straight line. Mrs. Beard stated that this area of her property is very desirable for a house location; however, Mr. Kennedy indicated that it was more important to have the road connect with a straight line than to gerrymander the road connection in some other fashion. After considering the testimony and evidence on this issue, I find that the road connection is appropriately shown on Developer's Exhibit 1A and this issue does not warrant that the project be denied or the Development Plan be altered in any way.

Mrs. Beard also expressed concern over the fact that her house is currently served by a private well. She has lived at this property for over 60 years and the well has always functioned perfectly for her needs. She is concerned that once the Developer begins to grade the property and construct the road system and houses that her well could be damaged. She asked for assurances that a water connection be provided to her house should any damage occur to the functionality of her well. It was stated at the hearing that the Developer will be running a public water supply along Belair Road and terminating that water supply at the edge of Mrs. Beard's property. This will in the future provide public water service to Mrs. Beard's property should it ever be developed with additional housing. It is very unlikely that any damage would occur to Mrs. Beard's well as a result of the grading and constructing of this property. The well does sit approximately 60 feet off the property line. However, while this issue is not sufficient to warrant

that the Plan be denied, I shall impose a condition which will provide some assurance that in the event the well shall fail, a connection to an appropriate water supply will be provided.

Mrs. Beard also indicated some concern over water that currently runs off of the property to be developed onto her property and across her driveway. The engineer testified and advised Mrs. Beard that the water which previously ran off the development site will now be captured and diverted into a stormwater management pond. This will help to alleviate any water runoff that traditionally came onto her property and across her driveway.

Finally, Mrs. Beard as well as others requested that a new traffic light be installed at the location where the proposed entrance road connects to Belair Road. At this time, I do not believe that a traffic light is warranted given the additional amount of homes to be constructed. However, as was stated at the hearing, an access permit is required to be provided by the State Highway Administration for this project. That issue and any future improvements to Belair Road as a result of this development being constructed, can and should be addressed by the State Highway Administration given that Belair Road is a State road. Therefore, any improvements or modifications to the access to the property from Belair Road shall be reserved to the State Highway Administration in furtherance of their access permit process.

Mr. and Mrs. Robert Rye, whose property is located immediately to the south of the property to be developed, also raised some concerns over the development project. Mr. Rye originally complained about a stormwater management issue that exists with an old subdivision known as the Gerst subdivision. The Gerst subdivision was approved pursuant to the old CRG process prior to this new Hearing Officer's approval process. Apparently, some stormwater management matters were left unresolved when that development was constructed. While I understand the issue raised by Mr. Rye, the matter involving the Gerst subdivision is not

legitimately before this Court and should not be entertained at this venue. As such, it should not prevent this Development Plan from being approved.

Mr. Rye also raised a question about the improvement to the existing turnaround at the end of Forge Park Road as is shown on the Developer's Exhibit 1A. The Developer of the Gunpowder Overlook was asked by the Department of Public Works to improve upon the T-turnaround that is located at the termination point of Forge Park Road. The modified turnaround area is actually located on the property owned by Gunpowder Farms LLC. The purpose of these improvements, as was explained by Mr. Kennedy, is to allow the trash truck to have an area to turn around when picking up trash from the residents who reside along Forge Park Road. At the present time, the trash truck has to back up the entire length of Forge Park Road to pick up trash. The sanitation department for Baltimore County requested that this area be improved so that the trash trucks can safely turn around and pick up the residents' trash. As such, it is appropriate that the turnaround area be modified as shown on Developer's Exhibit 1A. Accordingly, this issue is not sufficient to warrant a denial of the Plan. The Developer shall be required to make improvements to the end of Forge Park Road as shown on the Plan.

Mr. Rye also was concerned about the sheet flow of water running off of his property into the back yards of those future homeowners who will eventually purchase Lots 1-13. This is the area along the common boundary line between the Rye property and the property to be developed. Mr. Rye was assured at previous meetings that the stormwater management plan approved for this project will capture that runoff from his property and divert it to proper stormwater management ponds. Mr. Rye wanted this assurance so that he would not have any problems in the future with any of his new neighbors who might purchase these lots from this Developer. This is a legitimate issue and I shall impose a condition at the end of this Order requiring that the Developer capture

and manage any water runoff from Mr. Rye's property to prevent it from finding its way and causing problems in the rear yards of those future homeowners of Lots 1-13.

Mr. Rye also took issue with the landscape plan that has been submitted for approval. He accurately stated that the Plan does not propose any landscaping along Lots 1-5 which as stated previously are adjacent to his property. He is concerned that the very mature pine trees that are located on his property will, in the minds of those purchasers of Lots 1-5, be thought of as their screening. These trees are located on the Rye property and not on the property to be developed. Therefore, he has asked that additional landscaping be installed to the rear of Lots 1-5 so that there is no misunderstanding that the pine trees are supposed to provide any type of visual buffer for Lots 1-5. It is possible that Mr. Rye will one day cut down these trees. He does not want problems in the future with those homeowners.

The Developer, hearing Mr. Rye's concerns, indicated that they will provide additional landscaping along the rear of Lots 1-5. They simply stated that the plantings would have to be shade vegetation given that the large mature pine trees block out daylight from hitting whatever will be planted along the rear of Lots 1-5. Accordingly, I shall impose a condition at the end of Order addressing this issue.

Mr. Rye also was concerned that the future owners of Lots 1-13 would not know the location of their rear property lines. He is concerned that they may trespass onto his property. Mr. Rye owns a large parcel of land and the property line between his and the property to be developed may not be easily discernable. He stated that he would probably install some type of fencing along the line so as to prevent any future homeowner from mistakenly or inadvertently trespassing onto his land. While it might be advisable for him to do that, I find that the Developer does bear some responsibility in this regard and I shall require by way of restriction that each and every

corner of Lots 1-13 be staked by a surveyor at the time these homes are constructed so as to advise all potential purchasers of Lots 1-13 of exactly where their rear property line is located. The should place all future buyers on proper notice as to where their property ends.

Also appearing at the hearing and providing testimony was Mark Warren who resides at 9812 Gunforge Road which is a community located immediately to the east of the proposed development. The rear yard of the Warren property backs up to and is in very close proximity to the T-turnaround area shown on the proposed Lot 18. Mr. Warren is concerned that this turnaround area could cause people to loiter or park their cars in this remote area of this Development. He therefore asked that a street light be located in that area to prevent any persons from loitering in that area of the property. The Developer indicated that they would provide a street light in the area of the T-turnaround.

As stated previously, several residents who appeared at the hearing including Mr. Warren and Mr. Nolet expressed concerns over the speed of traffic along Belair Road. They have concerns that future residents of the Gunpowder Overlook who come and go from the property will have a difficult time pulling out onto Belair Road, particularly when making a turning movement in the southerly direction. Ken Schmid, a traffic expert, provided testimony and evidence at the hearing as well as submitted into evidence as Developer's Exhibit 8 a traffic study which has taken into account sight lines and sight distances to the entrance to this Development. Again, I believe it is appropriate to delegate to the State Highway Administration these issues of the access to and from this proposed Development, given that Belair Road is a State highway and an access permit is required before access can be provided to Belair Road.

There were no other issues raised that warrant the imposition of conditions or restrictions on this project or that would be substantial enough to warrant that the Development Plan be denied.

The Baltimore County Code 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.” *See*, Section 32-4-229 of the B.C.C. 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 development plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the Redlined Development Plan. However, I shall impose appropriate conditions and restrictions given some of the matters raised by the citizens in attendance.

Administrative Law Judge’s Decision on Petition for Variance

The variance, as previously indicated, was requested pursuant to Section 259.9.B.4.e of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a residential dwelling setback of 44 feet to a rear property line in lieu of the required 50 feet (Lot No. 48). As discussed at the hearing, Bill No. 11-12, which took effect April 2, 2012, now allows a 40 foot rear yard setback for Lot No. 48. The Development Plan and the setback shown for Lot 48 meets that requirement. As such, the variance request has been rendered moot.

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, the Gunpowder Farms, LLC Development Plan shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 10 day of April, 2012, that the “**GUNPOWDER OVERLOOK**” Development Plan, marked and accepted into evidence as Developer’s Exhibits 1A-1D, be and is hereby **APPROVED**; and

IT IS FURTHER ORDERED that the Petition for Variance relief to permit a residential dwelling setback of 44 feet to a rear property line in lieu of the required 50 feet (Lot No. 48), be and is hereby **DISMISSED AS MOOT**; and

IT IS FURTHER ORDERED that the waiver from Public Works Standards to allow a road paving width of 28 feet in lieu of 30 feet on a street right-of-way of 50 feet, be and is hereby **GRANTED**.

The aforementioned approval and relief granted herein shall be subject to the following conditions and restrictions:

1. The property owned by Mrs. Beard, located to the north of the site to be developed, is served by a private well. The Developer shall be required to extend public water service along Belair Road to the property of Mrs. Beard, so that she may have access to a public water supply should the need ever arise to connect to public water. The Developer’s responsibility is to construct the public water main to her property, but not to make the actual connection.
2. The Developer shall be required to capture and manage all surface water that runs off the Rye property onto the site to be developed. This runoff occurs in the vicinity of the common property line located along the rear of Lots 1-13 of the property to be developed. This water shall be managed so as to prevent any ponding or flooding to occur in the rear yards of Lots 1-13 of the Gunpowder Overlook.
3. The Developer shall provide additional landscaping along the rear lot lines of Lots 1-5 of Gunpowder Overlook. The Developer shall take into account that this area is heavily shaded by the existing pine trees located on the Rye property and plant appropriate vegetation that can survive in shaded areas.

4. In order to establish a visible boundary line between the property to be developed and the Rye property, the Developer shall be required to stake with proper markers the corners of the lots known as Lots 1-13 of Gunpowder Overlook. These markers shall remain in place until such time as the houses on these lots are occupied by owners, so as to ensure that these new owners know exactly where their rear yards end and where the property owned by Mr. Rye begins.
5. The Developer shall be required to install street lights within this new development. Specifically, the Developer shall be required to install a streetlight at the T-turnaround located on Lot 18 of Gunpowder Overlook. The purpose of this is to ensure adequate lighting is provided at this dead-end area of the roadway which should discourage any inappropriate activity from occurring in that vicinity.
6. The Developer shall be required to secure an access permit from the State Highway Administration which will allow access into the Development from Belair Road. The issuance of that permit is at the discretion of the State Highway Administration. However, it is hoped that the State Highway Administration will take into account the speed of vehicular travel along Belair Road, both north and south, and require such appropriate improvements to that new access point as they deem appropriate and advisable.

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

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz