

IN RE: DEVELOPMENT PLAN HEARING AND PETITION FOR SPECIAL HEARING	*	BEFORE THE
	*	OFFICE OF
(McNEAL FARM PROPERTY) George J. & Louisa M. McNeal Owner/Developer	*	ADMINISTRATIVE HEARINGS
	*	FOR
	*	BALTIMORE COUNTY
	*	HOH Case No. 14-487 and Zoning Case No. 2012-0329-SPH

* * * * *

**ADMINISTRATIVE LAW JUDGE’S COMBINED ZONING AND
DEVELOPMENT PLAN OPINION & ORDER**

This matter comes before the Office of Administrative Hearings 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 hearing also involves a request for special hearing relief under the Baltimore County Zoning Regulations (B.C.Z.R.). George J. & Louisa M. McNeal, the developers of the subject property (hereinafter “the Developer”), submitted for approval a redlined Development Plan prepared by Little & Associates, Inc., known as “McNeal Farm Property.”

The Developer proposes to construct 30 single-family detached units on 9.19 acres of land zoned DR 5.5. The site is located on existing Babikow Road in South Perry Hall. The site is developed with a farmstead consisting of a main structure, a circular drive and many accessory structures that are all proposed to be removed. The site is predominantly open with scattered vegetation.

In addition to the Hearing Officer's Hearing (HOH), the Developer is requesting certain zoning relief and has filed a Special Hearing request pursuant to § 260.2.D of the Baltimore County Zoning Regulations ("B.C.Z.R."), to:

1. Confirm that the subject property is not located north of Ridge Road and is therefore not subject to the 75' minimum lot width required, and
2. In the alternative, if the Special Hearing is denied, request for a Deviation of Standards or Variance to allow 62' minimum lot widths in lieu of the 75' minimum lot width.

THE HOH

Details of the proposed development and the requested zoning relief are more fully depicted on the one-sheet Development Plan that was marked and accepted into evidence as Developer's Exhibit 1. The property was posted with the Notice of Hearing Officer's Hearing and Zoning Notice on August 26, 2012 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing.

Appearing at the requisite Hearing Officer's Hearing in support of the Development Plan on behalf of the Developer and property owner was Steven Rosen, Paul Amirault, and G. Dwight Little, Jr., PE and Aaron Kensinger, both with Little & Associates, Inc., the consulting firm that prepared the site plan. Howard L. Alderman, Esquire with Levin & Gann, PA, appeared and represented the Developer.

Several citizens from the area also attended the hearing and objected to the proposal. The citizens' names are reflected on the sign-in sheets and they were represented by Leslie Pittler, Esquire.

Numerous representatives of the various Baltimore County agencies, who reviewed the Development Plan, also attended the hearing, including the following individuals from the Department of Permits and Development Management: Jan Cook (Project Manager), Dennis

Kennedy, Development Plans Review, Brad Knatz, Real Estate Compliance, and Jeffrey Perlow for Bruno Rudaitis (Office of Zoning Review). Also appearing on behalf of the County were David Lykens from the Department of Environmental Protection and Sustainability (DEPS), and Jenifer Nugent from the Department of Planning (DOP). 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.

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 §§ 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 the hearing, each of the Baltimore County agency representatives identified above (with the exception of the DOP) indicated that the redlined Development Plan (marked as Developer's Exhibit 1) addressed any and all comments submitted by their agency, and they each recommended approval of the plan. Ms. Nugent, on behalf of DOP, indicated that her agency recommended denial of the plan and special hearing petition, given that the Developer

failed to comply with the 75' lot width requirement contained in B.C.Z.R. § 260.

Dwight Little, Jr., a professional engineer who was accepted as an expert, was the Developer's sole witness. Mr. Little noted that the redlined notations on the Plan addressed each of the comments submitted at the Development Plan Conference (DPC) by County representatives. Mr. Little described most of the redlined notations as "mundane", and noted that other than the proposed lot width of 62' (as opposed to 75' if B.C.Z.R. § 260 were applicable), there were no unresolved issues. The witness testified the property is approximately 9.9 acres in size, which would allow for 54 single-family dwellings, even though the Developer is proposing only 30 lots in a loop configuration, as shown as Developer's Exhibit 1.

Mr. Little also addressed an issue concerning the proposed ingress/egress from Babikow Road. Several community members expressed concern with the sight distances, citing speeding vehicles and the heavy volume of traffic at present. Mr. Little stated that the Plan satisfied Baltimore County sight distance requirements (which was confirmed by Dennis Kennedy), and that in his opinion the proposed point of access is superior to the alternative proposed by the community, which would be situated near proposed Lots 1 and 2.

In conclusion, Mr. Little testified that in his opinion, the plan (Developer's Exhibit 1) complied with all applicable provisions of the B.C.C. and development regulations.

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. At this juncture, I believe the Developer would be entitled to approval of the Development Plan, such approval being contingent upon the grant of special hearing relief, discussed below.

ZONING REQUEST – SPECIAL HEARING

In addition to the Development Plan approval, the Developer sought special hearing relief under the B.C.Z.R. As noted earlier, the Petition sought to determine the applicability, vel non, of the 75' lot width requirement set forth in B.C.Z.R. § 260. This issue, along with the ingress/egress at Babikow Road as discussed above, was of great concern to the community, and Ms. Winchester testified that the community association desired the lots to be 75' wide. Based upon the testimony and evidence presented, I will deny the request for special hearing relief.

The zoning issue in this case concerned whether or not B.C.Z.R. § 260.2.D was applicable to the project. That regulation provides in pertinent part as follows:

The minimum width for any single-family detached lot located in the South Perry Hall – White Marsh Area north of Ridge Road is 75 feet as measured along both the front wall and rear wall of the dwelling unit.

B.C.Z.R. § 260.2.D (emphasis added).

While this would seem to be a straightforward and simple inquiry, it in fact is anything but.

As noted in the earlier portion of this Order, the Developer's engineer opined that the regulation was not applicable. Mr. Little, referencing a map marked as Petitioner's Exhibit 5, testified the site is east or northeast of Ridge Road, while the regulation in question applies only to properties "north" of Ridge Road.

But the DOP and the Office of People's Counsel both disagree, and contend that the site is "clearly" north of Ridge Road and is subject to the 75' width requirement. The DOP's recommendations were contained within its Zoning Advisory Committee (ZAC) comments dated July 30, 2012, wherein that agency recommended "that the petitioner not be granted any relief from the [Section 260] standards and regulations." Mr. Zimmerman submitted a letter dated August 21, 2012 (also contained within the zoning case file) wherein his office expressed the

opinion that “the property in question is indeed north of Ridge Road ... and is subject to ... the minimum 75-foot width standards.”

Based on a review of the various maps and exhibits submitted with regard to the issue (*See* Petitioner’s Exhibits 2, 4, 5 & 8), it is apparent that the site is not “due north” of Ridge Road. But at the same time, the regulation does not contain such a requirement. Rather, as discussed in the engineer’s testimony, the property is most accurately described as being northeast of Ridge Road. This task is complicated by the disjointed nature of Ridge Road, that according to witnesses historically ran for a much greater length before being interrupted by the I-95 highway. In any event, from the point where Ridge Road intersects Babikow Road, seen most clearly on Exhibits 4 and 5, the site is just east of the line drawn by the engineer to reflect due north from this intersection.

As such, I believe that the regulation is applicable to this development. Even if one adopts in its entirety Mr. Little’s testimony, the result would be the same, because a location that is “northeast” of a point still uses north as the cardinal direction. Northeast (or northwest for that matter) is an intercardinal direction, and serves to further divide the headings on a compass. In fact, many compasses and other directional systems contain further divisional lines, such as NNE, NNW, ENE, ESE, etc. But the intricacies of such navigational systems are complex, and well beyond the ken of the undersigned, and most likely the legislative branch as well. Using the plain and ordinary meaning of the word “north”, as I am obliged to do by B.C.Z.R. § 101, I believe that the site in question is north of Ridge Road, and that B.C.Z.R. § 260 D is applicable to the project. I am of the same opinion if one considers the site to be northeast of Ridge Road; as discussed above, the cardinal direction in such a scenario is still “north”, and that brings the development within the scope of the regulation.

The Developer has requested, in the event the regulation was deemed applicable, a variance or deviation of standards to approve 62' lot widths. I will deny the request, as recommended by the DOP, and do so for two reasons. First, the 75 foot lot width requirement, as explained by Mr. Little, was contained in the 2001 South Perry Hall – White Marsh area plan, approved by the County Council in Resolution 48-01. See Petitioner’s Exhibit 1. This area plan was incorporated (by law, B.C.C. § 32-4-102) into Master Plan 2010. In a recent case, the court of appeals has held that development plans in Baltimore County must be in conformance with the master plan, and the opinion does not appear to provide for exceptions to its holding. HNS v. People’s Counsel, 425 Md. 436 (2012).

The other, and perhaps more important, reason for denying the relief is that the Developer cannot satisfy the requirements for such exceptions provided by B.C.Z.R. § 260.1. That regulation permits a “deviation” from the standards, but provides that the hearing officer must “consider the findings presented by the DOP ... before a development plan is approved.” B.C.Z.R. § 260.1.C.2. Here, the DOP recommended denial of the request. Additionally, the regulation provides that deviations of standards (here, the 75' lot requirement) shall be allowed only if “clearly necessary” to:

- a. Comply with another standard;
- b. Comply with environmental regulations or otherwise protect resources; or
- c. Achieve the best possible development design, considering other goals in the Comprehensive Manual of Development Policies.

In this case, the engineer testified that the deviation was necessary so that the Developer could construct homes that would be compatible with the adjoining Springhouse Station subdivision. But this opinion was premised upon the fact that if the deviation was not granted, the Developer would then build duplex homes (permitted as of right) that would be incompatible with the adjoining single-family dwellings. While that is probably correct, the Developer could of course adhere to the standards and simply build fewer homes on the site. While I would imagine this would be an unpalatable choice, I at the same time do not believe the Developer has shown that the deviation of standards is “clearly necessary” in these circumstances.

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 McNeal Farm Property Development Plan shall be denied consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 4th day of October, 2012, that the redlined “**McNEAL FARM PROPERTY**” Development Plan, marked and accepted into evidence as Developer’s Exhibit 1, be and is hereby **DENIED**.

IT IS FURTHER ORDERED that the Petition for Special Hearing relief pursuant to § 260.2.D of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to:

1. Confirm that the subject property is not located north of Ridge Road and is therefore not subject to the 75’ minimum lot width required, and
2. In the alternative, if the Special Hearing is denied, request a Deviation of Standards or Variance to allow 62’ minimum lot widths in lieu of the 75’ minimum lot width,

be and are hereby **DENIED**.

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