

IN RE: DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING	*	BEFORE THE OFFICE OF
(Hillshire Road)	*	ADMINISTRATIVE HEARINGS
12 th Election District		
7 th Council District	*	FOR
(HILLSHIRE OVERLOOK)		
	*	BALTIMORE COUNTY
Hillshire Road Property, LLC,		
<i>Legal Owner</i>	*	
Castle Rock Realty, LLC, <i>Developer</i>		HOH Case No. 12-0165 &
Owner/Developer	*	Zoning Case 2019-0298-SPH

* * * * *

**ADMINISTRATIVE LAW JUDGE’S COMBINED
DEVELOPMENT PLAN AND ZONING OPINION AND 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 Article 32, Title 4, of the Baltimore County Code (“BCC”). Timothy M. Kotroco, Esquire, on behalf of Hillshire Road Property, LLC, *Legal Owner*, and Castle Rock Realty, LLC, *Developer* (hereinafter “the Developer”), submitted for approval a one-sheet redlined Development Plan (“Plan”) prepared by Colbert, Matz & Rosenfelt, Inc., known as “Hillshire Overlook”.

The Developer is proposing 18 single-family detached dwellings on a 4.409 acre tract zoned DR 5.5. Most of the uses surrounding the site are residential with a few commercial properties fronting directly onto German Hill Road which connects to the Merritt Boulevard commercial corridor. Directly to the north and east of the property is the Holy Rosary Cemetery, which was established in 1889. The cemetery located to the south is associated with the Saint Michael Ukrainian Catholic Church and was established in the mid-20th century. Both remain active sites. The subject property is currently a mostly wooded vacant site. There is no previous project history for this site.

In addition, the Developer filed a Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), as follows: (1) Pursuant to BCC § 33-6-116(G) to grant the recommendation of the Director of the DEPS and to grant an environmental variance to permit the removal of 13 of 20 specimen trees; and (2) To approve a waiver from Baltimore County Standard Design Plate R-J-4 to permit a public street with a 28 ft. paving width and right-of-way of 50 ft. in lieu of the required 50 ft. right-of-way with 30 ft. wide paving.

The development and zoning cases were considered at a combined hearing as permitted by BCC § 32-4-230. Details of the proposed development are more fully depicted on the redlined 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 (“HOH”) and Zoning Notice both on April 26, 2019, in compliance with the regulations. The undersigned conducted a public hearing on May 24, 2019, in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland.

In attendance at the HOH in support of the Plan on behalf of the Developer was Frank Scarfield, Jr. Also in attendance was Matthew Bishop and Richard E. Matz, with Colbert, Matz & Rosenfelt, Inc., the firm that prepared the site plan. Timothy M. Kotroco, Esquire represented the Developer. Several neighbors attended the hearing and expressed concerns about various aspects of the project.

Numerous representatives of the various Baltimore County agencies who reviewed the Plan also attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections (“PAI”): Patrick Williams, on behalf of Darryl Putty, Project Manager, Jim Hermann and Jos Venturina (Development Plans Review [“DPR”]), LaChelle Imwiko, Real

Estate Compliance, and Gary Hucik (Office of Zoning Review). Also appearing on behalf of the County were Stephen Ford from the Department of Environmental Protection and Sustainability (“DEPS”), and Brett M. Williams from the Department of Planning (“DOP”).

Each County representative indicated the Plan addressed all comments submitted by their agency, and they each recommended approval of the Plan. Mr. Williams indicated none of the schools in the district are overcrowded, as shown in the school impact analysis admitted as Baltimore County Exhibit 3. Mr. Hermann confirmed his agency approved a schematic landscape plan (Baltimore County Exhibit 1) and that in lieu of providing the required 18,000 sq. ft. of open space, the Developer will pay a fee in the amount of \$63,180.00. Baltimore County Exhibit 2.

DEVELOPER’S CASE

In the “formal” portion of the case, the Developer presented one (1) witness: Matthew Bishop, a landscape architect with Colbert, Matz & Rosenfelt, Inc. Mr. Bishop was accepted as an expert and explained in detail the development proposal. He described the layout of the site and noted that while the zoning would permit 24 lots on the tract, the Developer was proposing only 18 single-family dwellings. Mr. Bishop described the design of the stormwater management system for the development which he noted had a 24-hour draw-down period. He testified that the system is designed to have no standing water, except for perhaps after repeated heavy rain events.

Mr. Bishop opined that the redlined Development Plan (Developer’s Exhibit 1) satisfied all requirements set forth in the development and zoning regulations. He testified DEPS granted a special variance to permit the removal of 13 of 20 specimen trees on site, but he noted a special effort was made to preserve the forested area along the northern boundary of the site. With regard to the waiver regarding paving width, Mr. Bishop testified most new developments are in fact constructed with 28 ft. wide internal roadways. He noted this reduces the amount of impervious

coverage on the site and also tends to serve as a traffic calming device since drivers tend to travel faster on wider streets.

Several neighbors expressed opposition to the Plan and thought the project represented “irresponsible development.” See Protestants’ Exhibit 1. While many of the points raised by protestants are valid, I cannot deny the request on that basis. Under the Baltimore County Code, when all County agencies recommend approval of a development plan it is “deemed Code-compliant in the absence of evidence to the contrary.” People’s Counsel v. Elm Street Dev., Inc., 172 Md. App. 690, 703 (2007). The court in Elm Street hold that once county agencies recommend approval of a plan “it was then up to [protestants] to provide evidence rebutting the Director’s recommendations.” Id. at 703. I do not believe protestants presented sufficient evidence to rebut the agency recommendations.

The BCC provides that the “Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations.” BCC § 32-4-229. After considering the testimony and evidence presented by the Developer and the positive recommendations of all County reviewing agencies, I find that the Developer has satisfied its burden of proof and is entitled to approval of the Plan.

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 BCC, the “Hillshire Overlook” shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 3rd day of **June, 2019**, that the “**HILLSHIRE OVERLOOK**” Plan marked and accepted into evidence as Developer’s Exhibit 1, be and is hereby **APPROVED**.

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) Pursuant to BCC § 33-6-116(G) to grant the recommendation of the Director of the DEPS and to grant an environmental variance to permit the removal of 13 of 20 specimen trees; and (2) To approve a waiver from Baltimore County Standard Design Plate R-J-4 to permit a public street with a 28 ft. paving width and right-of-way of 50 ft. in lieu of the required 50 ft. right-of-way with 30 ft. wide paving, be and is hereby **GRANTED**.

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