

<b>IN RE: DEVELOPMENT PLAN HEARING &amp;</b>	*	BEFORE THE OFFICE OF
<b>PETITION FOR VARIANCE</b>		
(11022 & 11026 Philadelphia Road)	*	ADMINISTRATIVE HEARINGS
11 <sup>th</sup> Election District		
6 <sup>th</sup> Council District	*	FOR
<b>(WILLIAMS FIELDS AT PERRY HALL</b>		
<b>1<sup>st</sup> Material Amendment)</b>	*	BALTIMORE COUNTY
William J. Williams, 3 <sup>rd</sup> and		
Barbara Anne Williams, <i>Legal Owners</i>	*	<b>HOH Case No. 11-0876 &amp;</b>
William Grove Investments, LLC,		<b>Zoning Case 2019-0341-A</b>
<i>Developer/Applicant</i>	*	

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**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”). David K. Gildea, Esquire, with Smith, Gildea & Schmidt, LLC, on behalf of William James Williams, 3<sup>rd</sup> and Barbara Anne Williams, *Legal Owners*, and William Grove Investments, LLC, *Developer/Applicant* (hereinafter “the Developer”), submitted for approval a ten-sheet redlined Development Plan (“Plan”) prepared by Morris & Ritchie Associates, Inc., known as “Williams Fields at Perry Hall – 1<sup>st</sup> Material Amendment”.

The Developer is proposing to further subdivide Lot 53 (as shown on the development plan for Phase I of the project) to construct 23 single-family dwellings for a total of 78 single-family dwellings on 48.14 net acres of DR 2H zoned land. Phase 1 has been constructed and homes are occupied. A stream system, associated forest and steep slopes run parallel to I-95 to the north, and along the western property boundary. Another tributary divides the property in an east/west direction.

In addition, the Developer filed an amended Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“BCZR”) as follows: from § 259.9.B.3 to allow a 75 ft. lot width in lieu of the required 85 ft. in the DR-2-H zone for Lot 61; from § 259.9.B.4.b to allow a 30 ft. front yard setback in lieu of the required 40 ft. in the DR-2-H zone for Lots 56, 57, and 58; and for such other and further relief as may be deemed necessary by the Administrative Law Judge (“ALJ”) for Baltimore County, and to amend the previously approved Final Development Plan (“FDP”) of Williams Fields at Perry Hall.

The development and zoning cases were considered at a combined hearing as permitted by Baltimore County Code (“BCC”) § 32-4-230. Details of the proposed development are more fully depicted on the redlined ten-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”) on May 29, 2019 and Zoning Notice on June 7, 2019 in compliance with the regulations. The undersigned conducted a public hearing on June 27, 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 William and Barbara Williams, Robert B. Munson, and Mickey Cornelius. Also in attendance was Joshua T. Sharon, a professional engineer with Morris & Ritchie Associates, Inc., the firm that prepared the site plan. David K. Gildea, Esquire and Zack Wilkins, Esq. 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”): Jerry Chen, Project Manager, Vishnu Desai, Michael Viscarra and Jim Hermann (Development Plans Review [“DPR”]), Brad Knatz, Real Estate Compliance,

and Jeffrey Perlow (Office of Zoning Review). Also appearing on behalf of the County were Steve Ford from the Department of Environmental Protection and Sustainability (“DEPS”), and Lloyd T. Moxley 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. Moxley indicated that although Chapel Elementary School is “overcrowded,” sufficient capacity for 64 students exists at the adjacent Honeygo Elementary School. A school impact analysis was submitted as Baltimore County Exhibit 2. Mr. Hermann confirmed his agency approved a schematic landscape plan (Baltimore County Exhibit 1) and that the Developer will provide 13,975 sq. ft. of open space on site, as well as private amenities, to satisfy the Local Open Space (“LOS”) regulations.

#### DEVELOPER’S CASE

In the “formal” portion of the case, the Developer presented one witness: Joshua T. Sharon, professional engineer with Morris & Ritchie Associates, Inc. Mr. Sharon was accepted as an expert and explained in detail the development proposal. He described the layout of the site and also explained and identified which of the proposed lots were included within the variance requests. In concluding his testimony, Mr. Sharon opined that the redlined Development Plan (Developer’s Exhibit 1) satisfied all requirements set forth in the development and zoning regulations. In addition, with respect to the zoning requests Mr. Sharon testified granting the petition would not have a detrimental impact upon the health, safety and welfare of the community.

#### PROTESTANTS’ CASE

As noted above, several members of the community opposed this project. Community members provided testimony highlighting their concerns, which generally speaking focused upon the congested and unsafe traffic conditions along Philadelphia Road. Residents also expressed

concern with the three (3) houses proposed along Md. Rt. 7 (i.e., Lot Nos. 56-58). Specifically, they are concerned reducing the front yard setback for these three (3) houses would cause a traffic safety issue, and several community members (and Mr. Sharon) described the steady stream of traffic along Philadelphia Road during morning and afternoon peak periods.

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, the exhibits offered at the hearing, and confirmation from the various County agencies that the Plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the Development Plan. As counsel noted, the Developer worked cooperatively with the DOP and was able to eliminate most of the variance requests contained in the original petition.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

I find based on Mr. Sharon’s testimony that the property is unique in a zoning sense due to the environmental features, significant grade changes and existing improvements. As such, the variance pertaining to the width of Lot 61 will be granted.

I share the community’s concern with the three (3) single-family dwellings proposed along Philadelphia Road. Residents focused mostly upon the proposed 30 ft. setback from Rt. 7, for which variance relief was sought. As to that issue, I am convinced by Mr. Sharon’s testimony that

the 30 ft. setback (in lieu of the 40 ft. required) would be sufficient. The reality is the State Highway Administration (“SHA”) has taken a 40 ft. wide right-of-way at the front of Developer’s property. What that means, as Mr. Sharon testified, is that the houses would be situated approximately 50 ft. from the travelled portion of the roadway. So in reality the front yard setback is 50 ft., even though a variance was needed since the lot would be just 30 ft. from the SHA’s expansive right-of-way.

Although no one from the community addressed the precise point, I believe a traffic safety issue would be presented with the Plan as designed. Specifically, each of the three (3) proposed homes would have a driveway for ingress/egress from Philadelphia Road. And these driveways would be close to the new public road into the project, Perkins Circle, which will provide access to 20 new dwellings. Using industry recognized standards these homes would generate approximately 200 vehicle trips a day. Each time a vehicle enters or exits the property is considered a “trip,” which means on average perhaps 100 motorists on a daily basis would access Rt. 7 from the new development.

Many residents described how difficult it is for them to exit their homes onto Philadelphia Road, and I believe that would be especially so for the residents of these three (3) proposed homes, who would in a sense be competing for access to the highway at the same time that residents would be exiting Perkins Circle attempting the same maneuver. In addition, I believe the potential for conflict could also exist when the owners of the three (3) homes attempted to exit their driveway and had to contend with vehicles entering the new community via the deceleration lane proposed in that area. As a general rule, both the State of Maryland and Baltimore County prefer to reduce the number of access points off of state highways, and while the SHA did not express a concern

with the Plan, I believe the proposed location of the three (3) dwellings could interfere with the primary access point for the community at Perkins Circle.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 1<sup>st</sup> day of **July, 2019**, that the redlined Development Plan for **“WILLIAMS FIELDS AT PERRY HALL – 1<sup>st</sup> Material Amendment”** marked and accepted into evidence as Developer’s Exhibit 1 (with the exception of Lot Nos. 56, 57 and 58 shown thereon, which are not approved), be and is hereby **APPROVED**.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to the Baltimore County Zoning Regulations (“BCZR”) as follows: from § 259.9.B.3 to allow a 75 ft. lot width in lieu of the required 85 ft. in the DR-2-H zone for Lot 61, and to amend the previously approved Final Development Plan (“FDP”) of Williams Fields at Perry Hall, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to the BCZR § 259.9.B.4.b to allow a 30 ft. front yard setback in lieu of the required 40 ft. in the DR-2-H zone for Lots 56, 57, and 58, be and is hereby **DENIED**.

IT IS FURTHER ORDERED that the Forest Conservation Variance required to permit removal of Specimen Tree ST-18, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that within thirty (30) days of the date hereof, Developer shall submit to Baltimore County a revised Development Plan showing the elimination of Lot Nos. 56 – 58.

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