

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
N/S Winands Road, Opposite of		
Cedars Road	*	ZONING COMMISSIONER
(McDonogh Green)	*	OF
2 nd Election District		
4 th Council District	*	BALTIMORE COUNTY
True Gospel Apostolic Faith Church, Inc.,	*	
<i>Legal Owner</i>		
Gordon Development Co., Inc.,	*	Case No. 02-750
<i>Contract Purchaser/Developer</i>		

* * * * *

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for consideration of a development plan prepared by McKee & Associates, Inc. for the proposed development of the subject property by the owner, True Gospel Apostolic Faith Church, Inc., and contract purchaser, Gordon Development Co., Inc. (Developer), with 21 new single-family homes on 6.004 acres of land, zoned D.R.3.5, located on the north side of Winands Road just east of Adrienne Way in the Randallstown area of Baltimore County. The subject property and proposed subdivision are more particularly described on the redlined development plan submitted into evidence and marked as Developer's Exhibit 1. While no zoning variances are requested or needed, the Developer seeks approval of a waiver of public works standards to allow for a 28-foot wide road on a 40-foot right-of-way in lieu of the standard 30-foot wide road on a 50-foot wide right-of-way for a proposed public road.

This proposal has been reviewed in accordance with the development review regulations codified in Article 32 of the Baltimore County Code. Those regulations establish a process by which development is reviewed through a series of steps or stages. The first step of the process requires that the Developer submit a concept plan, which as the name suggests, is a schematic representation of the proposed development. The concept plan is submitted for review at a

conference held by and between representatives of the Developer and the County at a Concept Plan Conference (CPC), which in this case was conducted on November 10, 2008. The second step of the process requires a Community Input Meeting (CIM), which is conducted during evening hours at a public facility in the vicinity of the proposed development. The CIM provides an opportunity for residents of the locale to review and offer comment on the proposal. The CIM for this project was held on December 17, 2008 at the Winand Elementary School. Subsequently, a development plan is submitted for review and comment at a conference held again between the Developer and County agency representatives. Often the development plan has been revised to incorporate changes suggested at the CPC and/or CIM. The Development Plan Conference (DPC) in this case was held on July 22, 2009. The fourth and final phase of the review process requires a Hearing Officer's Hearing (HOH), which is a public hearing on the proposal before the Zoning Commissioner/Deputy Zoning Commissioner, and is conducted in accordance with the rules governing administrative hearings in this State. In this case, the Hearing Officer's Hearing was held before the undersigned Zoning Commissioner on August 20, 2009.

Appearing at the public hearing required for this project were Michael S. Greenspun, on behalf of Gordon Development Co., Inc., and their attorney, Howard L. Alderman, Jr., Esquire. Also appearing on behalf of the Owner/Developer was Geoffrey C. Schultz, with McKee & Associates, Inc., the consultants who prepared the development plan. Numerous representatives of the various Baltimore County agencies who reviewed the plan attended the hearing, including the following individuals from the Department of Permits and Development Management (DPDM): Colleen M. Kelly, Project Manager; Dennis A. Kennedy, P.E., Development Plans Review; Brad Knatz, Land Acquisition; and, Leonard Wasilewski, Zoning Review. Also appearing on behalf of the County were Lloyd T. Moxley, Office of Planning (OP); David V. Lykens, Department of Environmental Protection and Resource Management (DEPRM); and Bruce Gill, Department of

Recreation and Parks (R&P). Finally, written development plan comments were received from Steven D. Foster, on behalf of the Maryland State Highway Administration (SHA), and Lt. Roland Bosley, Jr., Baltimore County Fire Marshal's Office. These and other agency comments are contained within the case file. There were no Protestants or other interested persons present.

The subject property under consideration is a long and narrow rectangular lot identified on Maryland Tax Map 77 as Parcel 1268 accessible on the south side from Winands Road. As stated, the property contains a gross area of 6.004 acres zoned D.R.3.5 located in the Owings Mills Growth Area. The site is currently improved with a vacant single-family dwelling known as 8636 Winands Road that will be razed prior to redevelopment along with the attendant septic system that needs to be removed or properly abandoned. There are no streams, wetlands or steep slopes on the site. The acreage of the property and zoning classification will permit development with up to 21 homes, all to be served by public water and sewer. Access will be from Winands Road across from Cedars Road by means of Bald Eagle Court that will lead into the subdivision and terminate in a cul-de-sac. Interior Windmill Road will be extended and connected to the existing roadway to the east. As illustrated on Developer's Exhibit 1 and the Pattern Book (Baltimore County Exhibit 2), the lots will be 70 feet wide and the homes will be in the 50-foot wide range and feature garages. The Developer will provide landscaping and two (2) storm water management facilities that will capture the storm water and discharge it into existing storm drains. The area of open space is located at the northern portion of the property as approved by the County.

Sections 32-4-227 and 228 of the Baltimore County Code (B.C.C.) sets forth the standards by which the Hearing Officer must follow when considering a development plan. At the public hearing, the Hearing Officer is required to determine what, if any, open issues or agency comments remain unresolved. Testimony and evidence received was that all issues raised within the comments submitted by the various County reviewing agencies have been resolved and

incorporated within the revised redlined development plan and that the plan complies with all County regulations. It should be noted that Mr. Moxley from the Office of Planning testified that the redlined plan met the requirements of his office and the Performance Standards of Baltimore County Zoning Regulations (B.C.Z.R.) Section 260. Additionally, the Pattern Book was approved and he (Moxley) testified that the School Impact Analysis, accepted into evidence as County Exhibit 1, was prepared using the recent amendments to the applicable statutes and that it complied with the Accumulative Development Impact Analysis as required by law. On behalf of DEPRM, Mr. Lykens confirmed that the complex review portions of the development plan that pertain to environmental constraints, floodplains, storm water management, the final forest conservation plan and ground water management have been completed and that his department recommended approval. Mr. Lykens did indicate that the Hearing Officer should comment on the vacant dwelling and underground septic system prior to building permits being issued. There being no open issues or concerns raised by either the Developer and the County agency representatives in attendance, it was not necessary to take any testimony but a brief presentation of the development plan was provided by Geoffrey Schultz, a principal with the firm of McKee & Associates, Inc.

In addition to development plan approval, Developer requested a waiver pursuant to B.C.C. Section 32-4-107(a), which permits the Hearing Officer, upon request from a Department Director, to grant a waiver of any or all requirements of Subtitles 3, 4 and 5 of Title 32 of the Baltimore County Code. Developer requested a waiver from the Bureau of Development Plans Review Policy Manual to approve a public road, Bald Eagles Court, to have a paved section 28 feet wide on a 40 foot right-of-way in lieu of the required 30 feet of paving on a 50 foot wide right-of-way. Mr. Kennedy, the representative of Public Works, indicated that the Director recommends approval of the requested waiver.

B.C.C. Section 32-4-107 provides that at the request of a department director, I may grant

a waiver, much like the Public Works waiver requested, provided certain enumerated criteria are met. Such criteria are as follows:

Section 32-4-107. Waivers (a)1.

- (i)1. The size, scope, and nature of a proposed development does not justify strict compliance with this title;
 - 2. A waiver would be within the scope, purpose, and intent of this title; and
 - 3. All other county laws and regulations have been complied with; or
- (ii) Compliance with this title would cause unnecessary hardship.

As explained by Mr. Schultz, the request regarding Bald Eagle Court was intended to minimize environmental impacts of the proposed development and the potential for zoning variances. As indicated previously, the lot is a long and narrow parcel of land. The limited 243 foot lot width would reduce or restrict the proposed lot depths if a 50-foot right-of-way was required. The requested approval of a 40 foot wide right-of-way and a 28-foot road width would allow for both sidewalk improvements within easement area(s) and home lot depths of 90 feet or more. Such a request, while not in strict compliance with the mandates of the B.C.C. is compliant with all other applicable regulations and is clearly within the scope, purpose, and intent of the B.C.C. I do not find it necessary or justified in this particular situation that the proposed development strictly comply with the regulations of the B.C.C. I easily find that the requested waiver meets the above criteria of the B.C.C. Section 32-4-107(a)(1)(i) and as a result will approve the requested waiver. With the testimony of Mr. Schultz and the concurrence of the different County and State agencies, the Developer satisfied its burden of proof with regard to approval of the development plan and, therefore, is entitled to approval of the plan that complies with the applicable regulations.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R., Article 32, Title 4 of the Baltimore County Code, the development plan, and requested waiver for a 28-foot paving section on a 40-foot right-of-way, shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 25th day of August 2009 that the redlined development plan for the **MCDONOGH GREEN PROPERTY**, identified herein as Developer's Exhibit 1, be and is hereby APPROVED, subject to the following conditions:

1. The Developer is permitted to proceed; however, the Developer is hereby made aware that doing so shall be at its own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief herein could be rescinded.
2. The subdivision plat may be recorded when approved, however, all existing septic system components serving the existing vacated dwelling located on the property shall be removed or properly abandoned before any razing permit, grading permit, road construction/underground utility installation permit or a permit to construct any new dwelling on the development property is issued.

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

WJW:dlw

_____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner/Hearing Officer
for Baltimore County