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| IN RE: DEVELOPMENT PLAN HEARING | * | BEFORE THE |
| E/S Park Heights Avenue (MD Route 129) | | |
| 2800' S of Walnut Avenue | * | ZONING COMMISSIONER |
| (The Helm at Worthington) | * | OF |
| 4 th Election District | * | BALTIMORE COUNTY |
| 2 nd Council District | * | |
| Stephan Y. Werba, et ux | * | Case No. IV-660 |
| <i>Owners/Developer</i> | | |

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HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before the Hearing Officer/Zoning Commissioner for consideration of a development plan prepared by Gerhold, Cross & Etzel, Ltd. for the proposed development of the property by the owners, Stephan Y. Werba, and his wife, Sandra B. Werba (“Developer”) with a total of six (6) single-family dwelling lots; for one (1) existing home and five (5) proposed custom homes. The subject property contains a gross area of 12.133 acres, more or less, zoned R.C.5, and is located on the east side of Park Heights Avenue just south of Walnut Avenue and north of the Caves Valley Golf Club in Owings Mills¹. The proposed subdivision is more particularly described on the redlined development plan submitted and marked into evidence as Developers’ Exhibit 1.

As to the history of this project through the development review process, codified in Article 32 of the Baltimore County Code (B.C.C.), the process described therein is initiated by the filing of a concept plan, which, 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). The CPC in this case was conducted on January 8, 2007. Thereafter, as required, a Community Input Meeting (CIM) is conducted during evening hours at a public facility in the vicinity of the proposed development.

¹ The Baltimore County Master Plan identifies this portion of Park Heights Avenue as a scenic route.

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 March 29, 2007 at the Owings Mills Elementary School. Subsequently, a development plan is submitted for review 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 initially held on April 30, 2008. Following the DPC, the appropriate reviewing agencies submit development plan comments and a public hearing on the proposal is ultimately conducted before the Zoning Commissioner/Deputy Zoning Commissioner. In this case, the Hearing Officer's Hearing was scheduled before the undersigned on May 22, 2008; however, was continued at the request of the Developer and the Department of Environmental Protection and Resource Management (DEPRM). Mr. Lindgren, on behalf of the Werba's, indicated that computations necessary for considering the storm water management proposal had not been submitted and reviewed by DEPRM. Thus, the matter was continued for further proceedings to April 17, 2009 to allow time for further DPC review, which occurred on March 25, 2009, and to then incorporate any additional changes recommended. As required, this decision now follows.

Appearing at one or both of the public hearings held on this project were Stephan and Sandra Werba, co-owners of the subject property, Scott A. Lindgren, a professional land surveyor, on behalf of Gerhold, Cross & Etzel, Ltd., and Richard Truelove, Professional Engineer, the consultants who prepared the development plan and storm water management studies. Also appearing on behalf of the Owners/Developer was Anne Gleeson, a landscape architect and an environmental and ecological consultant. 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): Darryl D. Putty, Project

Manager; Dennis Kennedy and Avery Harden, Development Plans Review; Ron Goodwin, Land Acquisition; and, Jeffrey Perlow, Zoning Review. Also appearing on behalf of the County were Curtis Murray, Office of Planning (OP); David Lykens, Department of Environmental Protection and Resource Management (DEPRM); and Bruce Gill, Department of Recreation and Parks (R&P). In addition, written comments were received from Lt. Don W. Muddiman, of the Baltimore County Fire Marshal's Office and Steven D. Foster, on behalf of the Maryland State Highway Administration (SHA). These and other agency remarks are contained within the case file. The proposed transformation of the Werba's site generated concerns by the adjacent owners of unimproved property on the west side of Park Heights Avenue. Eric D. Becker and his wife, Jill E. Becker, retained J. Carroll Holzer, Esquire to represent them and produced James S. Patton, a professional engineer as an expert witness.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel with 576' of frontage on the east side of Park Heights Avenue (Maryland Route 129) between Walnut Avenue and Blendon Road in the rural residential area of Owings Mills. The property contains a gross area of 12.133 acres, more or less, zoned R.C.5 which would allow six (6) lots. As noted, the Developer is proposing six (6) lots that are approximately 2.0 acres each. Three (3) of the proposed lots (Lots 4, 5 and 6) will front Park Heights Avenue while the existing home on Lot 1 (12001 Park Heights) and the two (2) remaining proposed lots will be situated to the rear of the property. The site can be described as a tree lined open field, with a few scattered tree and shrub patches within. There are also environmental constraints as a stream and forest buffer area parallels Maryland Route 129. The layout and scheme of the proposed development is driven in large part by the forest buffer, forest conservation and 100-year floodplain easement areas (3.20 acres) that traverse the western half of the site. The entryway to the subdivision will be the existing driveway from Park Heights Avenue located at the far northwestern corner. The driveway will be paved and

widened to 16 feet, except that the bridge width at the stream crossing will remain the same however the bridge will be upgraded by raising the decking to carry the 20-year storm when flowing full. The panhandle drive will then turn interiorly transecting the site and terminating in a 70' x 30' "T"-turnaround. All lots will be served by private well and septic systems.

Pursuant to Sections 32-4-227 and 228 of the B.C.C., which regulate the conduct of the Hearing Officer's Hearing, I am required to first identify any unresolved agency comments or issues as of the date of the hearing. Mr. Lindgren, consultant for the Developer, indicated that in his judgment, the plan is in compliance with all applicable standards, regulations and policies for development in Baltimore County. The County agency representatives who were present corroborated Mr. Lindgren's testimony. Their responses are summarized as follows:

Department of Environmental Protection and Resource Management (DEPRM) – David Lykens, Manager, Development Coordination, appeared on behalf of DEPRM and stated that the reviewing sections within DEPRM had reviewed the work submitted by Richard Truelove and the redlined plan and confirmed that the Storm Water Management and Ground Water Management sections had no outstanding issues. Also, he confirmed that the Environmental Impact Review (EIR) section had no outstanding issues.

Bureau of Land Acquisition – Ron Goodwin appeared on behalf of Land Acquisition. Mr. Goodwin stated that the redlined plan delineated the existing State Highway Administration's right-of-way as well as County access to the storm water management reservation. These redline plan notes satisfactorily addressed his bureau's concerns. No outstanding issues remained.

Zoning Review – Jeffrey Perlow appeared as representative of the Zoning Review Office and stated that his office had also reviewed Exhibit 1 and there were no unresolved issues. He recommended plan approval.

Department of Recreation and Parks – Bruce Gill of this Department confirmed that his

department had reviewed both the development plan and the redlined development plan, Exhibit 1, for the subject project and determined that there were no outstanding issues and recommended approval. A waiver of Local Open Space was granted by his department and he introduced Jeanette Tansey's, Chief of Capital Planning and Development, letter of April 9, 2009, as Baltimore County Exhibit 1.

Bureau of Plans Review – Dennis A. Kennedy, P.E., of the Bureau of Plans Review, of the Department of Permits and Development Management, on behalf of the Department of Public Works (DPW), confirmed he reviewed Exhibit 1 and determined that the plan met all his agency's requirements. Therefore, the Bureau of Plans Review recommended approval. Mr. Holzer requested an opportunity to question Mr. Kennedy concerning the Becker's desire to develop their triangularly shaped lot, identified on Maryland Tax Map No. 49 as Parcel 52. Specifically, Mr. Holzer requested Mr. Kennedy's opinion as to whether the approval of this development plan would have any adverse impacts vis-à-vis the Becker's (1) obtaining a building permit for their property and (2) result in any increased cost involving the State with respect to access to their lot that is located across Park Heights Avenue from the Werba's access. Mr. Kennedy, while not speaking for the State Highway Administration, responded he saw nothing that would involve a SHA concern and no adverse effect(s) on Mr. and Mrs. Becker obtaining a County building permit for their 2.78 acre lot.

Office of Planning – Curtis Murray appeared at the hearing on behalf of the Office of Planning and stated that his department had no outstanding issues with the development plan. As Mr. Murray explained, the Office of Planning reviewed the plan for compliance with Baltimore County Zoning Regulations (B.C.Z.R.) Section 1A04.4 and with Section 32-6-103 of the B.C.C. In both respects, his office found, with the addition of General Note 21, the plan to be compliant. Mr. Murray introduced the Amended Pattern Book for the project as County Exhibit 2 and the approved

School Impact Analysis as County Exhibit 3. The Office of Planning recommended approval of the redlined plan with the Developer's assurance that architectural elevation drawings will be submitted for review and approval prior to the issuance of a building permit. He further stated, when questioned by Mr. Holzer, that the scenic views from Park Heights Avenue will not be impaired by this development, which has been designed in accordance with the Comprehensive Manual of Development Policies (CMDP).

Following input from the Developer and County representatives, I asked Mr. Holzer to state briefly what concerns the Beckers had about the proposed development. Mr. Holzer stated that the Developer had worked with his client and entered into negotiations to resolve their differences that would require additional landscape plantings in the forest conservation and buffer easements. Ms. Gleeson is working in concert with the Beckers and the County's Landscape Architect, Avery Harden, in this regard and is preparing an amended landscape plan. This necessitated a brief continuance to allow this issue to be addressed. To better understand the reasons for this request, testimony was received from Mr. Patton. He used an aerial photograph, marked into evidence as Community Exhibit 1, to demonstrate the existing access for the Beckers property and also for six (6) other lots that use the panhandle driveway that runs past the Beckers property and continues west away from Park Heights Avenue. Mr. Patton wanted to make certain that the Beckers contemplated future improvements for a single-family dwelling wouldn't be construed as "the straw that breaks the camels back", thereby prompting the SHA to require highway widening on the west side of Park Heights at this existing driveway access point. Secondly, he discussed the topography relationship of the subject properties. The Beckers lot is positioned higher in relationship to Park Heights Avenue and has exposed views of the Werba's property and more particularly the storm water management reservation and Lots 4, 5 and 6. He describes these lots as being "Reverse Frontage Lots" as the homes when built will face the private

driveway, as illustrated on Developer's Exhibit 1, rather than on Park Heights Avenue. This, he opines, will require evergreen screening behind the homes to block the Beckers view of the rear of these houses and their yards. The Baltimore County Landscape Manual has requirements which address these circumstances. For this reason, Mr. Harden met with the parties and their consultants and will assist them in the preparation of a landscape plan that graphically delineates required and additional plantings that will, upon agreement, be submitted and marked into evidence as a Joint Exhibit. It should be noted that Mr. Lindgren stated that in addition to the landscape screening to be planted, the Developer will be enclosing the storm water management facility located in the north central quadrant of the site with a split rail decorative fence as opposed to the standard chain-link fencing.

Having heard all the testimony from the parties and the expert witnesses presented by the Developer and on behalf of the neighboring property owner and Ms. Gleeson providing the two-page amended landscape plan showing suitable buffers and landscape screening, I am convinced that the Developer has met and satisfied all of the comments and concerns raised by the County's reviewing agencies and the community.

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." B.C.C. Section 32-4-229. With the testimony of Mr. Lindgren and with the concurrence of the County agencies charged with the responsibility of reviewing development plans, I find that the redlined development plan is in compliance with all applicable County, State and Federal regulations. Therefore, having identified no remaining unresolved or outstanding issues, the Developer has satisfied their burden of proof and is entitled to approval of their development plan.

Pursuant to the advertisement, posting of the property, and public hearing held thereon, the requirements of the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Article 32 of the Baltimore County Code, the development plan shall be approved.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 16th day of June 2009 that the red-lined development plan and the amended landscape plan for **THE HELM AT WORTHINGTON PROPERTY**, identified herein as Developers' Exhibit 1 and the parties combined Joint Exhibit, be and are hereby APPROVED, subject only to the following condition:

- Prior to improvements within the Park Heights Avenue (Route 129) right-of-way, the Developer shall obtain an access permit in compliance with the Zoning Advisory Committee (ZAC) comment submitted by Steven D. Foster, Chief, Engineering Access Permits Division of the State Highway Administration (SHA), dated March 20, 2009.

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

WJW:dlw

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