

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
S side of Nicodemus Road, W side of		
Franklin Blvd., N of Church Road	*	HEARING OFFICER
4 th Election District		
4 th Councilmanic District	*	FOR BALTIMORE COUNTY
(DELIGHT QUARRY)		
	*	
Arundel Corporation		
<i>Developers</i>	*	Case No. IV-700

* * * * *

HEARING OFFICER’S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Deputy Zoning Commissioner 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 (“BCC”). The legal owner and Developer, Arundel Corporation (“Developer”), submitted for approval a redlined/bluelined development plan (“Development Plan”) prepared by Draft McCune Walker, Inc. for property located adjacent to and on the south side of Nicodemus Road and adjacent to and on the west side of Franklin Boulevard, in the Reisterstown area of Baltimore County. The subject property contains approximately 120.64 acres, more or less, split-zoned D.R.1 (32.40 acres), D.R.3.5 (30.21 acres), D.R.10.5 (13.11 acres), D.R.16 (16.08 acres), B.M. (18.0 acres), O.R.2 (9.58 acres), R.C.5 (1.25 acres), and R.C.4 (0.01 acre) on which the Developer proposes a mixed-use development comprised of both residential and commercial uses. The residential component of the development plan includes 75 single-family detached dwellings, 66 single-family attached dwellings, and 108 active adult condominium units. The commercial component of the plan includes approximately 136,500 square feet of office and 20,000 square feet of retail.

The proposed development is more particularly described on the six-sheet, redlined/

bluelined Delight Quarry Development Plan that was marked and accepted into evidence as Developer's Exhibits 1A through 1F.

As to the history of the project, a concept plan for the proposed development was submitted to the County, and a Concept Plan Conference ("CPC") was held on March 31, 2008, at 9:00 A.M. in the County Office Building. As the name suggests, the concept plan is a schematic representation of the proposed development and is initially reviewed by and between representatives of the Developer and the reviewing County agencies at the CPC. Thereafter, as required, a Community Input Meeting ("CIM") is scheduled during evening hours at a location near the property to provide residents of the area an opportunity to review and comment on the plan. In this case, the CIM was held on May 7, 2008, at 7:00 P.M. at the Reisterstown Public Library located at 21 Cockeyes Mill Road, Reisterstown, Maryland. Members of the development team and the County's representative attended, as well as a number of interested persons from the community. Subsequently, a development plan is prepared, based upon the comments received at the CPC and CIM, and the development plan is submitted for further review at a Development Plan Conference ("DPC"), which again, is held between the Developer's representatives and County agency representatives to review and scrutinize the plan further. The DPC occurred on April 1, 2009, at 9:00 A.M. The Hearing Officer's Hearing for this proposed development was then scheduled for two dates, April 23, 2009, and a second day, April 24, 2009 (if necessary), in Room 106 of the County Office Building, 111 West Chesapeake Avenue in Towson, Maryland. The hearing began on April 23, 2009, at which time the Developer introduced a red-lined development plan, which was marked for identification purposes only as Developer's Exhibit 1A through 1F. Although the Developer did not formally present its case at that time due to the fact that there were still several outstanding issues with the plan (as will be

discussed, *infra*), testimony was received from several interested citizens in attendance and representatives from the various County agencies. Following this April 23, 2009 hearing date, the case was continued to August 21, 2009, at which time the Developer presented the redlined/bluelined Development Plan to replace the prior redlined development plan that was marked for identification purposes only as Developer's Exhibits 1A through 1F.

Certifications contained within the case file indicate that the property was properly posted with a sign that provided public notice of the April 23, 2009 and August 21, 2009 Hearing Officer's Hearing dates for at least 20 working days prior to the hearing, in order to notify all interested citizens of the date and location of the hearing. Proper notification was also provided for the August 21, 2009, hearing date in the form of written correspondence to all of those individuals that attended the prior April 23, 2009 hearing date.¹

At the public hearing, Steven Koren and Jim Roberson from the Koren Development Company appeared on behalf of the Developer. Robert Hoffman, Esquire and David Karceski, Esquire appeared as legal counsel for the Developer. The Developer presented as expert witnesses Kristy Bischoff, a licensed professional engineer with Daft McCune Walker, Inc. ("DMW"), the consultants responsible for preparation of the development plan, Mickey Cornelius, a professional engineer and professional traffic operations engineer with The Traffic Group, Inc., and Eric Hadaway, an environmental scientist and director of environmental services for DMW. Rick Hoehn and Lyndon Hart, registered landscape architects with Hoehn Landscape Architecture, LLC, and Mitchell Kellman, a land planner and zoning expert with DMW, also attended the public hearing in support of development plan approval. Seven

¹ One individual, Ms. Shirl Taylor, appeared on the April 24, 2009 hearing date that was assigned "if necessary." Although no hearing took place on that date, the Project Manager, John Sullivan, did appear in Room 106 of the County Office Building on that date at 9:00 A.M., at which time Ms. Taylor signed in on the "Citizens Sign-In Sheet." Ms. Taylor was also notified by letter of the August 21, 2009 hearing date.

interested persons were in attendance for at least one of the days of the public hearings in this case. Stewart Richardson appeared on behalf of the Sunnybrook Farms Area Community Association and George Harman on behalf of the Reisterstown Owings Mills Glyndon Coordinating Council. Individual property owners, Robert Jones of 818 Berrymans Lane, Maggie Baumbach of 9 Beau Mondes Court, Shirl Taylor of 534 Church Road, Mark Tsitlik of 107 Sunnyking Drive, and Mary Molinaro of 215 Chartley Drive, also attended as interested citizens.

Numerous representatives of the various Baltimore County agencies who reviewed the plan also attended the public hearings on April 23, 2009 and August 21, 2009, including the following individuals from the Department of Permits and Development Management: John Sullivan (Project Manager); Dennis Kennedy and Vishnu Desai (Bureau of Development Plans Review); Aaron Tsui and Jeff Perlow (Zoning Review Office); and Ron Goodwin (Bureau of Land Acquisition). Also appearing on behalf of the County were David Lykens (Department of Environmental Protection and Resource Management), Lloyd Moxley (Office of Planning), and Jan Cook (Department of Recreation and Parks). Finally, 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.

It should be noted at this juncture that the role of each reviewing County agency in the development review and approval process is to perform an independent and thorough review of the development plan as it pertains to its specific area of concern and expertise. The agencies specifically comment on whether the plan complies with all applicable Federal, State, and/or County laws and regulations pertaining to development and related issues. In addition, these agencies carry out this role throughout the entire development plan 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 Phase II review continues until a plat is recorded in the Land Records of Baltimore County and permits are issued for construction.

Pursuant to Sections 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 first day of the public hearing on April 23, 2009, Mr. Hoffman, counsel for Developer, indicated that two County reviewing agencies, the Bureau of Development Plans Review ("DPR") and the Department of Environmental Protection and Resource Management ("DEPRM"), had not yet completed their review of the redlined development plan. These two agencies reported as such at the hearing. All other reviewing County agencies were in a position to recommend approval of the redlined development plan at that time. Because review of the development plan was incomplete, I decided to continue this Hearing Officer's Hearing until a later date in order to allow for a complete review of the plan. The hearing reconvened, as noted above, on August 21, 2009, and the redlined/bluelined Development Plan, which replaced the prior redlined development plan, was marked and accepted into evidence as Developer's Exhibits 1A through 1F. Mr. Hoffman reported, based on his understanding, that all agency comments had been addressed and that he was not aware of any unresolved issues with regard to the redlined/bluelined Development Plan. The positions of all of the County agencies provided at the public hearing are summarized below:

Zoning Review Office: On April 23, 2009, Aaron Tsui appeared as a representative of the Zoning Review Office and indicated that all of his agency's comments had been addressed on the redlined development plan, and there were no unresolved issues. Approval was therefore

recommended by Mr. Tsui, who requested the ability to again review the development plan if Developer made adjustments to the layout of any proposed buildings subsequent to the April 23, 2009 hearing date.

On August 21, 2009, following the Zoning Review Office's review of the redlined/bluelined Development Plan, Mr. Tsui again recommended approval.

Department of Environmental Protection and Resource Management: On April 23, 2009, David Lykens appeared on behalf of his Department and explained that both the Groundwater Management and Storm Water Management Sections of DEPRM did not have any outstanding issues with the redlined development plan; however, the Environmental Impact Review Section had not yet completed its review of the plan.

On August 21, 2009, Mr. Lykens again reported for his Department and this time confirmed that all of DEPRM's reviewing sections (Groundwater Management, Storm Water Management, and Environmental Impact Review) had completed their review of the redlined/bluelined Development Plan and had no outstanding issues. Approval was therefore recommended.

Department of Recreation and Parks: On April 23, 2009 and August 21, 2009, Jan Cook appeared on behalf of Recreation and Parks and confirmed that the local open space requirements have been met and exceeded for the proposed development. Mr. Cook's Department therefore recommended approval of the redlined/bluelined Development Plan.

Planning Office: On April 23, 2009, Lloyd Moxley appeared on behalf of the Office of Planning and provided the Hearing Officer with a school impact analysis for the project which was marked and accepted into evidence as Baltimore County Exhibit 1. Based on the results of that analysis, Mr. Moxley confirmed that this project is in compliance with the adequate public

facilities provisions of Section 32-4-103 of the B.C.C.

Also, Mr. Moxley referred to a pattern book submitted by the Developer to the Office of Planning. Certain pages of the pattern book had been revised by the Developer and Mr. Moxley noted that the pattern book would need to be resubmitted to Planning following the April 23, 2009 hearing date in final form. The pattern book was, therefore, marked for identification purposes only as Baltimore County Exhibit 2A. Based on the above information, as well as the redlined development plan meeting all of the Office of Planning comments, Mr. Moxley for Planning recommended plan approval.

On August 21, 2009, Mr. Moxley confirmed that Planning had received and approved the updated pattern book which was marked and accepted into evidence as Baltimore County Exhibit 2 and also recommended approval of the redlined/bluelined Development Plan.

Development Plans Review (Public Works): On April 23, 2009, Dennis Kennedy appeared on behalf of the Bureau of Development Plans Review and confirmed that the redlined development plan met all of the County requirements from his Department's perspective.

On August 21, 2009, Vishnu Desai, another representative of Development Plans Review, appeared for Mr. Kennedy and confirmed that Developer's redlined/bluelined Development Plan met all of his Department's requirements and that there are no outstanding issues with regard to the Development Plan and recommended approval.

Bureau of Land Acquisition: On April 23, 2009 and August 21, 2009, Ron Goodwin appeared on behalf of the Bureau of Land Acquisition and confirmed that his agency had no outstanding issues with the redlined development plan and redlined/bluelined Development Plan, respectively. Approval of the Development Plan was therefore recommended by Land Acquisition.

Next, I asked the individuals attending the hearing to state briefly what concerns they had about the proposed development.

Mr. Stewart Richardson, a representative of the Sunnybrook Farms Area Community Association, was concerned with vehicular access from the subject property onto Franklin Boulevard. Specifically, Mr. Richardson suggested that only right-hand turns from the property should be permitted onto Franklin Boulevard.

Mr. George Harman, a representative of the Reisterstown Owings Mills Glyndon Coordinating Council, also raised traffic-related concerns. In addition to the concern raised by Mr. Richardson, Mr. Harman asked if the Developer had considered a one-way vehicular connection from the proposed Kiwanis field to off-street parking areas that will serve office buildings to be located north of the field. In Mr. Harman's opinion, such a connection would make it easier for Kiwanis field users to get to Nicodemus Road and, therefore, Reisterstown Road and any other points east of Interstate 795. Also, Mr. Harman asked about the possibility of public access to the quarry lake and if residential wells and septic areas in the vicinity of the subject property would be impacted by the proposed development.

Mr. Robert Jones resides at 818 Berrymans Lane, which is located just south of the subject property on the opposite side of Berrymans Lane. Mr. Jones addressed the proposed access point on Berrymans Lane and his concern was related to its location, which he described as between two curves in the road.

Ms. Maggie Baumbach resides at 9 Beau Mondes Court. Beau Mondes Court is located west of and on the same side of Nicodemus Road as the subject property. Ms. Baumbach asked the Developer to consider installation of a fence between a portion of the proposed development and the residences of Beau Mondes Court to discourage people from wandering onto their

properties. The Developer declined to install a fence and from a review of Developer's Exhibits 1A through 1F and the aerial photograph marked and accepted into evidence as Developer's Exhibit 4, it is clear that a significant vegetative buffer exists between the residences on Beau Mondes Court and the subject property and, for this reason, a fence is not necessary.

All of the above traffic-related concerns were addressed by the testimony of Mr. Cornelius, Developer's traffic engineer, which is outlined below. Mr. Hadaway, Developer's environmental scientist, responded to Mr. Harman's concern for wells and septic areas in the vicinity of the subject property. His testimony is also summarized below. Steven Koren addressed Mr. Harman's question about public access to the lake. The lake will act as a storm water management facility when the property is developed. Mr. Koren explained that, in order to meet Baltimore County's requirements, the lake must be fenced, which prohibits public access to it for recreational purposes.

Moving on to the more formal portion of the hearing, the Developer called on Kristy Bischoff to present the redlined/bluelined Development Plan. Ms. Bischoff, accepted as an expert in the field of professional engineering in numerous other development plan cases, was so accepted by this Hearing Officer in the same capacity. As part of Ms. Bischoff's testimony, a description of the property's location and the area surrounding the site was provided, and she then introduced the development proposal depicted in Developer's Exhibits 1A through 1F. The subject property, known as the Delight Quarry, is no longer actively quarried. Ms. Bischoff explained that the Developer proposes a mix of residential and commercial uses on this approximately 120.64 acre property. Specifically, three types of residential uses were identified: single-family detached dwellings (75 in total), single-family attached dwellings (66 in total), and 9 multi-family buildings containing active adult condominiums (108 units in total). With regard

to the commercial component of the Development Plan, Ms. Bischoff explained that two three-story office buildings, each approximately 68,250 square feet in size, and a one-story retail building approximately 20,000 square feet are proposed. The Development Plan provides for surface off-street parking spaces as well as a two-story structured parking facility to serve this project's commercial uses. Certain other project amenities were also highlighted during Ms. Bischoff's presentation of the Development Plan, including a proposed Kiwanis field for public use, a pedestrian and bicycle pathway that will surround the centrally located quarry lake, as well as numerous open space areas throughout the development. Access to the overall development is proposed by two access points on Franklin Boulevard, two access points on Nicodemus Road, and one access point on Berrymans Lane. At the conclusion of her presentation, Ms. Bischoff offered her opinion that the redlined/bluelined Development Plan (Developer's Exhibits 1A through 1F) fully complies with the development regulations contained in the Baltimore County Code and all applicable policies, rules, and regulations.

Following Ms. Bischoff's testimony, the Developer presented Mickey Cornelius, a registered professional engineer and certified professional traffic operations engineer, to respond to the traffic issues raised by Mr. Richardson, Mr. Harman, and Mr. Jones. Mr. Cornelius has appeared before this Hearing Officer on many occasions, and I accepted him as an expert in the field of traffic engineering without objection. Mr. Cornelius explained that one of the proposed access points on Franklin Boulevard would allow for left-hand turns onto this roadway. This particular access point is located at the southeast corner of the property and will allow the single-family detached and single-family attached dwellings proposed as part of this development to access Franklin Boulevard by way of an on-site public road labeled "Cobble Drive" on Developer's Exhibit No. 1. Mr. Cornelius acknowledged that drivers waiting to make left-hand

turns onto Franklin Boulevard will experience delays in turning onto Franklin Boulevard; however, traffic signals at intersections to the south and north of this proposed access point will provide for adequate gaps in traffic to allow for this turning movement. In Mr. Cornelius' expert opinion, this access point meets all applicable County requirements, and drivers traveling on Franklin Boulevard will not be impacted by vehicles making left-hand turns from this access point.

Next, Mr. Cornelius addressed the access point on Franklin Boulevard that will serve only the Kiwanis Field. In Mr. Cornelius' expert opinion, this access point also meets all applicable County requirements, and he confirmed that the County is satisfied with its restricted, right-in and right-out access to Franklin Boulevard. In response to Mr. Harman's inquiry about the possibility of a vehicular connection between the Kiwanis Field and nearby surface parking areas, Mr. Cornelius testified that there is a significant stream system between the field's location and the parking areas referenced by Mr. Harman. He also explained that the County prefers a separate access point for the Kiwanis Field.

Lastly, Mr. Cornelius addressed Berrymans Lane and the sole access point proposed on Berrymans, which will also serve the proposed single-family detached and single-family attached dwellings. Mr. Jones' concern was for the safety of this intersection. Mr. Cornelius identified Berrymans Lane as a two-lane road, which operates as a "fairly low volume roadway." In Mr. Cornelius' expert opinion, there is adequate site distance for this access point in both directions (north and south) on Berrymans Lane, making it safe for vehicles to enter the roadway from the subject property. This access point also meets all applicable County requirements according to Mr. Cornelius.

Following Mr. Cornelius' testimony, the Developer presented Eric Hadaway, an

environmental scientist, to respond to Mr. Harman's concern for residential wells and septic areas in the vicinity of the subject property. In general, Mr. Hadaway explained that, as part of the quarrying process, water was historically pumped out of the quarry pit, a process which had the potential to reduce the amount of water available to surrounding wells. Because the quarry pit is no longer being pumped and is filling with water, deep groundwater elevations in the vicinity are recovering and surrounding wells will have even greater water availability. In Mr. Hadaway's opinion, the surrounding wells will actually benefit from conversion of the quarry pit to the proposed lake. Mr. Hadaway also testified that, due to the direction of groundwater movement in the area toward the quarry pit, any concerns related to groundwater contaminants migrating away from the quarry pit and in the direction of surrounding residences are unfounded.

With regard to surrounding residential septic systems, Mr. Hadaway explained that the proposed development would also not have an adverse impact on these features. Private septic fields are much shallower in depth than residential wells, typically extending only about 16 feet below the ground's surface. It was Mr. Hadaway's opinion that, at this shallow depth, private septic systems would not be affected by the quarry pit filling with water.

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." *See* Section 32-4-229 of the B.C.C. After due consideration of the testimony and evidence presented by the Developer as well as the concerns raised by members of the community, the exhibits offered at the hearing, and confirmation from the various County agencies that the Development Plan satisfies those agencies' requirements, I find that the redlined/bluelined Development Plan marked and accepted into evidence as Developer's Exhibits 1A through 1F is in compliance with the Baltimore County Code and all applicable

policies, rules, and regulations. Therefore, having identified no remaining unresolved or outstanding issues that would prevent development plan approval, the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the redlined/bluelined Development Plan.

Pursuant to the advertisement, posting of the property, and public hearings held thereon, the requirements of which are contained in Article 32, Title 4, of the Baltimore County Code, the redlined/bluelined "DELIGHT QUARRY" Development Plan, accepted into evidence as Developer's Exhibits 1A through 1F, shall be approved.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County, this 4th day of September, 2009, that the DELIGHT QUARRY redlined/bluelined Development Plan, marked and accepted into evidence as Developer's Exhibits 1A through 1F, be and is hereby APPROVED.

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

____SIGNED_____
THOMAS H. BOSTWICK
Hearing Officer/Deputy Zoning Commissioner
for Baltimore County

THB:pz