

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
W/S of West Cherry Hill Court, N of		
Red Run Blvd.	*	HEARING OFFICER
4 th Election District		
4 th Councilmanic District	*	FOR BALTIMORE COUNTY
(Delight Quarry – Out Parcel)		
	*	
Arundel Corporation		
<i>Developer</i>	*	Case No. IV-702

* * * * *

HEARING OFFICER’S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before the Hearing Officer/Deputy Zoning Commissioner for Baltimore County, for a public hearing on a proposal submitted in accordance with the development review and approval process contained in Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). The legal owner and Developer of the property, Arundel Corporation (“Developer”), submitted for approval a redlined development plan prepared by Draft McCune Walker, Inc. for property located adjacent to and on the west side of West Cherry Hill Court, north of Church Road and Red Run Boulevard, in the Reisterstown area of Baltimore County. The subject property contains approximately 6.59± acres, more or less, split-zoned O.R.1 (5.59± acres) and R.C.5 (1.00± acres), on which the Developer proposes a total of 29 single-family attached condominium townhomes.

In addition to the development plan approval, the Developer requests a Modification of Standards to allow a maximum of 8 townhome units in a group in lieu of the permitted 6 townhome units, pursuant to the Residential Standards Section of the Comprehensive Manual of Development Policies (“C.M.D.P.”). This particular request pertains to the following groups of townhome units: (a) units 1 – 8; (b) units 9 -15; (c) units 16 – 22; and (d) units 23 - 29. Each row of townhomes contains either 7 or 8 units and, therefore, exceeds the number of units permitted in a row (6) without a modification of standards. In addition, the Developer has

requested a waiver of Public Works Standards for an on-site, private roadway with a 22-foot wide pavement section in lieu of the required 24-foot wide pavement section.

The proposed development and requested Modification of Standards and waiver of Public Works Standards are more particularly described on the two-sheet, redlined Delight Quarry - Out Parcel Development Plan marked and accepted into evidence as Developer's Exhibits 1A and 1B.

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 April 21, 2008, at 9:00AM 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. Because of changes and revisions made to the original concept plan, a second concept plan was submitted by the Developer and another Concept Plan Conference was held on August 25, 2008 in the County Office Building. 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 September 24, 2008 at 7:00PM at the Franklin Elementary School located at 33 Cockeys Mill Road in 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 the 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 29, 2009, at 10:00AM. The Hearing Officer's Hearing for this proposed development was then held on

May 22, 2009 in Room 106 of the County Office Building, 111 West Chesapeake Avenue in Towson, Maryland.

Certifications contained within the case file indicate that the property was properly posted with a sign that provided public notice of the Hearing Officer's Hearing 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.

At the public hearing, Jim Roberson from the Koren Development Company appeared on behalf of the Developer. Robert A. Hoffman, Esquire and David H. 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 firm responsible for preparation of the development plan, Rick Hoehn, a registered landscape architect with Hoehn Landscape Architecture, LLC, and Mickey A. Cornelius, a traffic engineer with The Traffic Group, Inc. Eric Hadaway, director of environmental services for DMW, and Mitchell J. Kellman, a land planner and zoning expert with DMW, also attended the public hearing. Two interested persons were in attendance, Shirl Taylor and Scott R. Cohen. Mr. Cohen signed the Citizen's Sign-In Sheet for this hearing in an individual capacity and on behalf of Etmac LLC and W. Cherry Hill Lane LLC.

Numerous representatives of the various Baltimore County agencies who reviewed the plan also attended the public hearing, including the following individuals from the Department of Permits and Development Management: John Sullivan (Project Manager); Dennis Kennedy (Development Plans Review); Aaron Tsui (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), Curtis Murray (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 B.C.C. Sections 32-4-227 and 32-4-228, 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. Mr. Hoffman, counsel for the Developer, indicated that based on his understanding all agency comments had been addressed, and that he was not aware of any unresolved issues with regard to the redlined Development Plan.

I then asked the particular agencies to state whether they had any outstanding issues. I have summarized their responses below:

Recreation and Parks: Jan Cook appeared on behalf of the Department of Recreation and Parks and confirmed that a waiver of local open space requirements was requested for this project and approved by his department director. The fee-in-lieu for this waiver will be satisfied in accordance with a letter, dated December 15, 2008, and countersigned by the director, a copy of which was reproduced on Developer's Exhibit 1A. As such, Mr. Cook's department

recommended approval of the redlined Development Plan based upon the terms and conditions of this letter.

Planning Office: Curtis Murray appeared on behalf of the Office of Planning and provided the Hearing Officer with a school impact analysis for the project that was marked and accepted into evidence as Baltimore County Exhibit 1. Based on the results of that analysis, Mr. Murray confirmed that this project is in compliance with the provisions of B.C.C. Section 32-4-103.

As Mr. Murray further explained, the Developer has requested a Modification of Standards in accordance with the Comprehensive Manual of Development Policies (C.M.D.P.) to allow more than 6 units in a row for the four groups of townhomes provided on the redlined Development Plan. These groups of townhome units contain either 7 or 8 units in a row. The Office of Planning reviewed this request for a Modification of Standards prior to the public hearing and recommends approval.

Also, Mr. Murray advised that the Developer had submitted to the Office of Planning a Compatibility Report in accordance with B.C.C. Section 32-4-402. This report, prepared by Hoehn Landscape Architecture, LLC, was marked and accepted into evidence as Developer's Exhibit 4. The County Code requires a compatibility finding by the Hearing Officer, following a recommendation by the Office of Planning Director, for approval of the proposed residential dwelling type in the O.R.1 Zone. Mr. Murray confirmed that the Office of Planning is satisfied that the Developer's compatibility report adequately addresses all of the compatibility objectives contained in B.C.C. Section 32-4-402(d)(1) through (8), and his office recommends that the Hearing Officer make a finding that the redlined Development Plan is in compliance with B.C.C. Section 32-4-402.

Lastly, Mr. Murray referred to a pattern book submitted by the Developer to the Office of

Planning, which was also approved by Planning. A copy of this pattern book was marked and accepted into evidence as Developer's Exhibit 3. Based on the above information, as well as the redlined plan meeting all other Office of Planning comments, Mr. Murray indicated his Office recommends approval of the redlined Development Plan.

Development Plans Review (Public Works): Dennis Kennedy appeared on behalf of the Bureau of Development Plans Review. Mr. Kennedy confirmed that the Developer's redlined plan met all of his department's requirements and comments, and that his department also recommends approval of the redlined Development Plan.

Mr. Kennedy then addressed the waiver of Public Works Standards requested in connection with Cherrystone Court, the private road to be constructed on the subject property. Specifically, by this waiver request, the Developer requests approval to allow a 22-foot wide pavement section for this private road in lieu of the standard 24-foot wide pavement section. Mr. Kennedy, on behalf of the Director of the Department of Public Works, recommends approval of this waiver request.

Department of Environmental Protection and Resource Management: David Lykens appeared on behalf of the Department of Environmental Protection and Resource Management ("DEPRM"). Mr. Lykens confirmed that DEPRM's Storm Water Management, Ground Water Management, and Environmental Impact Review Sections had no outstanding issues with regard to the development plan, and approval of the redlined Development Plan was, therefore, recommended.

Zoning Review Office: Aaron Tsui appeared as a representative of the Zoning Review Office and indicated that all of his agency's comments had been addressed and there were no unresolved issues. Therefore, Mr. Tsui recommended approval of the redlined Development Plan.

Bureau of Land Acquisition: Ron Goodwin appeared on behalf of the Bureau of Land Acquisition and confirmed that all of his agency's comments had been addressed and there were no outstanding issues. Therefore, Mr. Goodwin recommended approval of the redlined Development Plan.

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

Ms. Shirl Taylor resides at 534 Church Road, which is located west of the subject property, on the opposite side of Franklin Boulevard from West Cherry Hill Court. Ms. Taylor raised two concerns at the public hearing. Ms. Taylor's residence is served by a well, and she expressed concern for the safety of her well water given construction that has occurred in the vicinity of her property. This concern was not related specifically to construction that would occur on the subject property but other off-site construction in the vicinity of her property. Ms. Taylor's other concern was the possibility that the proposed development would create a traffic problem near her house on Church Road, west of Franklin Boulevard. This concern was addressed by the testimony of Mr. Cornelius, Developer's traffic engineer, which is outlined below.

Mr. Scott Cohen, legal owner of certain property located on the opposite side of West Cherry Hill Court from the subject property, asked for clarification on how his properties could be served by public sewer in the future and for clarification on the pavement width of existing West Cherry Hill Court. These questions were answered through the testimony of Ms. Bischoff, the Developer's professional engineer, and are also addressed below.

Moving on to the more formal portion of the hearing, the Developer called on Kristy Bischoff to present the redlined Development Plan. Ms. Bischoff, accepted as an expert in the field of professional engineering, has been so accepted in other Hearing Officer's Hearings for

residential development plans. As part of Ms. Bischoff's testimony, a description of the property's existing conditions and the area surrounding the site was provided, and she then introduced the development proposal shown on Developer's Exhibits 1A and 1B. Ms. Bischoff explained that the Developer proposes a total of 29 condominium townhomes on this approximately 6.59 acre property. All of these townhomes are located on the O.R.1 zoned portion of the property. Access to the proposed development is by a single access point from the existing West Cherry Hill Court. Ms. Bischoff then offered her opinion that the red-lined Development Plan, Developer's Exhibits 1A and 1B, fully complies with the development regulations contained in the Baltimore County Code and all applicable policies, rules, and regulations.

As indicated earlier, in addition to development plan approval, the 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, or 5 of Title 32 of the Baltimore County Code. As mentioned above, the Developer has requested the waiver to allow a private, on-site roadway with a 22-foot wide pavement section in lieu of the required 24-foot wide pavement section. On this issue, the Developer also presented Ms. Bischoff, who explained that the road will serve only the proposed 29 townhome units, shown and indicated on Developer's Exhibits 1A and 1B, and that use of this road, now and in the future, will be limited to these 29 townhome units. A connection between the subject residential development and any other adjacent properties is not possible given this development plan layout, the location of Interstate 795, and the road configuration of the neighboring subdivision. Insisting that the Developer redesign this private roadway to provide for a wider pavement width would result in unnecessary hardship without any resulting benefit or purpose being served. The Developer would be required, in Ms. Bischoff's expert opinion, to provide additional road

pavement width that is not necessary to serve the proposed 29 units, and the result would be an undesirable reduction of front yard areas provided for the townhome units. It should also be noted that the Director of the Department of Public Works has recommended approval of this waiver request.

Based on the evidence and testimony presented in support of the waiver and the positive recommendation provided by Mr. Kennedy for the Department of Public Works, I find sufficient justification as described above for the request and, pursuant to B.C.C. Section 32-4-107(a), I shall approve the requested waiver.

Next, Ms. Bischoff answered Mr. Cohen's questions about a sewer connection to his properties and verified the width of existing West Cherry Hill Court from the subject property to the road's connection with Red Run Boulevard. Ms. Bischoff confirmed that Mr. Cohen's properties would have access to public sewer by way of a sewer line, which runs through the subject property. This same sewer line will also serve an adjacent townhome community located on the north and east sides of the subject site. With regard to West Cherry Hill Court, Ms. Bischoff confirmed, by field measurements, the width of the road's existing pavement from the subject site's frontage on West Cherry Hill Court to its connection with Red Run Boulevard. Based on these measurements, Ms. Bischoff testified that the road is a minimum of 18 feet wide. The redlined Development Plan includes a note that verifies Ms. Bischoff's testimony on this point.

Following Ms. Bischoff's testimony, the Developer presented Rick Hoehn, registered landscape architect, to testify regarding the Compatibility Report prepared by his office (Developer's Exhibit 4) and the requested Modification of Standards. Mr. Hoehn was accepted as an expert in the field of landscape architecture and has also testified, in the same capacity, in numerous other Hearing Officer's Hearings for residential development plans. On the issue of

compatibility, Mr. Hoehn identified the “neighborhood” by use of an aerial photograph that was marked and accepted into evidence as Developer’s Exhibit 8, on which his office over-layed the proposed 29 townhome unit development. Referring to this exhibit, Mr. Hoehn explained how the proposed development meets all of the compatibility objectives contained in B.C.C. Section 32-4-402(d)(1) through (d)(8). To reach his conclusion, Mr. Hoehn noted and examined -- in detail through testimony and by referring to his Compatibility Report -- a development plan approved prior to this public hearing for another townhome community, located on the north and east sides of the subject property. This prior approved development plan, known as “West Cherry Hill Court,” is a 61 unit townhome community now under construction and similar in layout to the proposed development of the subject property. In fact, it was Mr. Hoehn’s expert opinion that the proposed townhomes will be “nearly identical in scale, massing, proportion, and overall architectural character to the ... adjacent West Cherry Hill Court townhouse community.” *See*, Developer’s Exhibit 4, p. 6. Based on a review of the Compatibility Report submitted by Hoehn Landscape Architecture, LLC, the positive recommendation of the Office of Planning made through Mr. Murray at this public hearing, and Mr. Hoehn’s testimony on the issue of compatibility, I find that the requirements of B.C.C. Section 32-4-402 have been met, and I shall approve the proposed development as being “compatible.”

The Developer also offered Mr. Hoehn’s testimony for the requested Modification of Standards. Mr. Hoehn established his familiarity with the requirements for a modification of standards contained in the Residential Standards Section of the C.M.D.P. and identified the specific request. The C.M.D.P. permits a maximum number of 6 townhome units in a row and a maximum length of 180 feet for a single townhome grouping, without an approval by the Hearing Officer. Any row of townhomes that contains more than 6 units or is longer than 180 feet from end to end requires a recommendation from the Office of Planning and an approval by

the Hearing Officer.

In the instant matter, the Developer proposes four separate townhome groupings, three with 7 units in a row and one with 8 units in a row. None of the four groupings will exceed the permitted 180 feet in length from end to end. The C.M.D.P. provides that, if the increased number of units is used to minimize topographic disturbance or address unusual lot configuration, a modification of standards is appropriate provided certain design guidelines are met. Mr. Hoehn testified that the request is due to the unusual “boomerang” shape of the property, which in part, results from the configuration of West Cherry Hill Court along the site’s eastern boundary line. Mr. Hoehn also referred to the pattern book (Developer’s Exhibit 3) to further testify that the townhome groupings were designed to emphasize certain design elements listed in the C.M.D.P. (i.e. -- steeper roof pitches, staggered front building line setbacks with varied building facades, and access to the sides and rear of each townhome grouping). Based on a review of the pattern book, the positive recommendation of the Office of Planning, and Mr. Hoehn’s testimony in support of the request, I find that the requirements of the C.M.D.P. have been met, and I shall approve the requested Modification of Standards.

The Developer also presented Mickey Cornelius, a registered professional engineer and certified professional traffic operations engineer, to respond to Ms. Taylor’s question about traffic. Mr. Cornelius has appeared as an expert before this Hearing Officer on many occasions, and was accepted as an expert in traffic engineering at this hearing. Mr. Cornelius explained that the intersection of Church Road and Franklin Boulevard now operates as a level of service “A” intersection and, with the traffic to be generated by the proposed townhome development, this intersection will continue to operate at a level of service “A.” The 29 proposed townhomes would generate no more than 20 peak hour trips, which will, in Mr. Cornelius’ words, have only a “minimal” impact on this intersection. In response to Ms. Taylor’s concern for additional

traffic on Church Road to west of Franklin Boulevard, Mr. Cornelius explained that the primary route of travel from the subject property to Interstate 795 will not include Church Road, west of Franklin Boulevard. It was further explained that there would, therefore, be only a “limited draw” of traffic to this portion of Church Road from the subject property.

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*, B.C.C. Section 32-4-229. After due consideration of the testimony and evidence presented by the Developer, 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 Development Plan, marked and accepted into evidence as Developer’s Exhibits 1A and 1B, 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 Development 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 Baltimore County Code, the redlined “DELIGHT QUARRY - OUT PARCEL” Development Plan, accepted into evidence as Developer’s Exhibits 1A and 1B, shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County, this 8th day of June, 2009, that the DELIGHT QUARRY - OUT PARCEL redlined Development Plan, marked and accepted into evidence as Developer’s Exhibits 1A and 1B, be and is hereby APPROVED; and

IT IS FURTHER ORDERED that the Modification of Standards, pursuant to the Comprehensive Manual of Development Policies, Residential Standards Section, to allow a maximum of 8 townhome units in a group in lieu of the permitted 6 townhome units in a group, for the following groups of units: (a) units 1 – 8; (b) units 9 -15; (c) units 16 – 22; and (d) units 23 – 29, be and is hereby APPROVED; and

IT IS FURTHER ORDERED that the waiver from Public Works Standards to permit a 22-foot wide pavement section in lieu of the required 24-foot pavement section for Cherrystone Court, 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