

<b>IN RE: DEVELOPMENT PLAN HEARING</b>	*	BEFORE THE
W side Hereford Road, S of		
Monkton Road	*	HEARING OFFICER
7 <sup>th</sup> Election District		
3 <sup>rd</sup> Councilmanic District	*	FOR BALTIMORE COUNTY
(JKBA, LLC PROPERTY)		
	*	
<b>Barbara Shank, JKBA, LLC</b>		
<i>Developers</i>	*	<b>Case No. VII-373</b>

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**HEARING OFFICER’S OPINION & DEVELOPMENT PLAN ORDER**

This matter comes before this Deputy Zoning Commissioner/Hearing Officer 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 (“B.C.C.”). Barbara Shank and JKBA, LLC, the developers of the property (“Developer”), submitted for approval a development plan prepared by Mark Tsitlik, P.E. with KCW Engineering Technologies, Inc. (KCW), known as the “JKBA, LLC PROPERTY,” for property located on the west side of Hereford Road, south of Monkton Road and east of York Road, in the Hereford area of northern Baltimore County. The Development Plan filed prior to the Development Plan Conference was marked and accepted into evidence as Developer’s Exhibit 1.

The Developer proposes to further develop the subject property, zoned R.C.5, which was originally an 8.120 acre tract that created two lots through a minor subdivision<sup>1</sup>. Each of the two lots is now improved with a single-family dwelling, as well as a 5.895 acre unimproved parcel known as Parcel 3. This further development involves subdividing Parcel 3 into two additional lots, proposed Lots 3 and 4. Proposed Lot 3 contains 1.5 acres, more or less, and proposed Lot 4 contains approximately 4.1 acres, within which would exist a Forest Conservation Easement of

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<sup>1</sup> Minor Subdivision #01-043M.

0.52 acre and an unbuildable strip of land of 0.3 acre known as Parcel A. Both of these proposed lots are currently unimproved. The Developer is also requesting certain waiver relief pursuant to Section 32-4-107 of the Baltimore County Code (“B.C.C.”) as follows:

- A waiver of the open space requirement of 0.05 acre in lieu of a fee of \$6, 860.00 to be paid prior to the recordation of the record plat (*See*, Baltimore County Exhibit 2), and
- A waiver of the requirement of a storm water management facility and a proposed retaining wall that encroaches upon the adjacent Forest Buffer Easement (*See*, Developer’s Exhibit 7).

Details of the proposed development are more fully depicted on the redlined Development Plan that was marked and accepted into evidence as Developer’s Exhibit 2.

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 9:00 AM 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 May 28, 2008 at 7:00 PM at the Hereford High School, 17301 York Road, Hereford, Maryland. Members of the development team and the County’s representatives 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 consultants and County agency representatives to review and scrutinize the plan even further. The DPC occurred on June 3, 2009 at 9:00 AM. The Hearing Officer’s Hearing for this proposed development was

then scheduled for June 25, 2009 at 9:00 AM 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 on May 26, 2009 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.

Appearing at the public hearing in support of the development plan proposal was Deborah C. Dopkin, Esquire, attorney for the Developer, JKBA, LLC. Also appearing in support of the proposed development were Mark Tsitlik and Douglas Kennedy, professional engineers with KCW Engineering Technologies, Inc. (KCW), the Developer's engineers, and John Hobner, environmental consultant with Bentley Springs Environmental LLC. In addition, Andy Shaw attended the hearing on behalf of the Developer. Appearing as interested citizens were Georges Hoche of 16908 Hereford Road, George R. Rew of 17509 Prettyboy Dam Road, John and Patricia Rodak of 16920 Hereford Road, and Erica Magliocca of 16910 Hereford Road who was represented at the hearing by Francis X. Borgerding, Esquire.

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 and Development Management: Colleen Kelly (Project Manager), Dennis Kennedy (Development Plans Review), Donna Thompson (Zoning Review Office), and Brad Knatz (Bureau of Land Acquisition). Also appearing on behalf of the County were David Lykens from the Department of Environmental Protection and Resource Management (DEPRM); Lloyd Moxley from the Office of Planning and Jan Cook from the Department of Recreation & Parks. In addition, written comments were received from 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 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. Ms. Dopkin, the Developer's attorney, presented a general overview of the plan and particularly commented on the minor redlined changes that resolved any outstanding issues that were identified at the Development Plan Conference. Ms. Dopkin then indicated, based on her understanding that all agency comments had been addressed, that she was not aware of any unresolved issues with regard to the redlined Development Plan. Further, Ms. Dopkin indicated it was her understanding that the requested waivers from Open Space and Storm Water Management requirements were both approved by the Department of Recreation and Parks and the Department of Environmental Protection and Resource Management, respectively.

It was further indicated that a tentative agreement had been reached between the Developer and the adjoining property owner Erica Magliocca in regard to various storm water management issues. This agreement submitted by both Ms. Dopkin, counsel for the Developer,

and Mr. Borgerding, counsel for Ms. Magliocca, and was marked and accepted into evidence as Developer/Magliocca Exhibit 1. It is anticipated that the proposed agreement will alleviate any concerns Ms. Magliocca and her husband have regarding the proposed development. Although the terms of the agreement are not set in stone, both parties agreed that any supplemental terms would not be necessary to enter into evidence prior to submission of this Order. Both parties also agreed that this proposed agreement, Developer/Magliocca Exhibit 1, serves as a condition to approval of the proposed development.

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

Recreation and Parks: Colleen Kelly appeared in place of Jan Cook on behalf of the Department of Recreation and Parks. She indicated that Mr. Cook was unable to attend the hearing, and that the proposed development is subject to Local Open Space requirements. The required local open space for the 2 units is 2,000 square feet or 0.05 acre, more or less; 1,300 square feet active and 700 square feet passive. Ms. Kelly confirmed that a waiver of local open space requirements was requested for this project and approved by Recreation and Parks. The fee-in-lieu for this waiver will be satisfied in accordance with a letter dated March 13, 2009 and countersigned by the director, a copy of which was marked and accepted into evidence as Baltimore County Exhibit 2. As such, Mr. Cook's department recommended approval of the redlined Development Plan.

Planning Office: Lloyd Moxley appeared on behalf of the Office of Planning. Mr. Moxley indicated that the redlined plan reflects all of the Planning Office's concerns. Mr. Moxley indicated that a School Impact Analysis was prepared by both the Developer and the Office of Planning and revealed that, although the permitted enrollment of the elementary school in the district exceeds the 115% threshold of the State's Adequate Public Facilities law, the

adjacent school districts provide adequate occupancy to accommodate the proposed development. A copy of the School Impact Analysis was marked and accepted into evidence as Baltimore County Exhibit 1. Mr. Moxley also noted that architectural elevation proposals must be submitted prior to receipt of a building permit for a determination of compliance with the requisite Performance Standards. Based on the above, as well as the plan meeting all other Office of Planning comments, he indicated that 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 recommends approval of the redlined Development Plan.

Department of Environmental Protection and Resource Management (DEPRM): David Lykens appeared on behalf of DEPRM. Mr. Lykens stated that there are no outstanding issues and that DEPRM recommends approval of Developer's redlined plan. Although, Mr. Lykens did submit into evidence his office's approval of the waiver, he indicated that such approval was subject to DEPRM oversight and the Developer's and subsequent property owners' compliance with B.C.Z.R. regulations now and in the future. In particular, Mr. Lykens indicated that a copy of the final memorialized agreement between Ms. Magliocca and the Developer should be circulated to DEPRM for their review in order to ensure there are no DEPRM issues created as a result of the agreement. Both Ms. Dopkin and Mr. Borgerding agreed to this request.

Office of Zoning Review: Donna Thompson appeared on behalf of the Zoning Review Office. She also indicated that the redlined plan met all required regulations and that the Zoning Review Office recommends approval of the redlined Development Plan.

Land Acquisition: Brad Knatz appeared on behalf of the Bureau of Land Acquisition.

Mr. Knatz indicated that his agency's concerns were addressed on the redlined Development Plan and that his agency was satisfied with the Development Plan and recommends approval.

Moving next to the more formal portion of the hearing, the Developer's attorney, Ms. Dopkin introduced Mark Tsitlik, P.E., a professional engineer with KCW Engineering Technologies, Inc., and confirmed his familiarity with the laws and regulations pertaining to residential and commercial development, particularly in Baltimore County. Mr. Tsitlik was offered and accepted as an expert in land development and the necessary zoning and land use regulations and policies in Baltimore County<sup>2</sup>. As Ms. Dopkin explained, Mr. Tsitlik was directly involved in the evaluation and preparation of the development plan for this project, and prepared and sealed the redlined Development Plan for the Developer.

As to the plan itself, Mr. Tsitlik testified that the subject property consists of approximately 5.895 acres zoned R.C.5. The property is located on the west side of Hereford Road, south of Monkton Road and east of York Road, in the Hereford area of Baltimore County. Access to the property is via a panhandle ingress/egress connected to Hereford Road. Originally, the subject property was part of a larger 8.120 acre tract of land that was subdivided into two lots, each currently improved with single-family dwellings, and a third parcel that was left unimproved. It is this unimproved parcel that is the subject of the request before the Hearing Officer. The Developer proposes that the subject property, Parcel 3, be further subdivided into two lots, proposed Lots 3 and 4. Proposed Lot 3 contains 1.5 acres, more or less, and proposed Lot 4 contains approximately 4.1 acres, within which would exist a Forest Conservation Easement of 0.52 acre and an unbuildable strip of land of 0.3 acre known as Parcel A. Copies of Forest Buffer and Forest Conservation Declarations were marked and accepted into evidence as

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<sup>2</sup> A copy of Mr. Tsitlik's resume and credentials were marked and accepted into evidence as Developer's Exhibits 5A and 5B, respectively.

Developer's Exhibits 6A and 6B, respectively. Both of these proposed lots are currently unimproved. Mr. Tsitlik further testified that the proposed lots would be improved in the future with single-family dwellings and that such a use meets and furthers the rural-residential nature and purpose of the R.C.5 Zone.

As to the waiver requests, Mr. Tsitlik noted that Recreation and Parks approved the payment of a fee in lieu of the open space requirement. Further, it was noted that the request for waiver from DEPRM regarding storm water management had been submitted and approved. A copy of this approval was marked and accepted into evidence as Developer's Exhibit 7. Mr. Tsitlik opined that in his professional knowledge and experience, the redlined Development Plan marked and accepted into evidence as Developer's Exhibit 2 fully complies with the development regulations contained in the Baltimore County Code and all applicable policies, rules, and regulations. As Mr. Tsitlik confirmed, the redlined Development Plan has been presented to each of the County agency representatives and each agency likewise confirmed that all issues were addressed and resolved on the redlined plan.

The Developer additionally called upon John Hobner, an environmental consultant on this project, to testify as an expert witness regarding environmental issues on the project<sup>3</sup>. Mr. Hobner testified that it was his professional opinion that the redlined Development Plan complies with all environmental regulations.

Following the presentation of the Developer's case, the citizens in attendance at the hearing were given an opportunity to air any concerns they had with the Development Plan. George R. Rew inquired as to the purpose of the newly created Parcel A -- the 0.3 acre unbuildable strip of land. Mr. Tsitlik pointed to note 37 on the redlined Development Plan, showing that Parcel A is included in the plan only to illustrate that the strip may provide access

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<sup>3</sup> A copy of Mr. Hobner's resume and credentials was marked and accepted into evidence as Developer's Exhibit 8.

to the adjoining property in the future if it were to ever be developed. John Rodak, resident of 16920 Hereford Road which adjoins the proposed development to the North, stated his concerns regarding storm water drainage and the adverse effects it could have on the proposed landscaping on the property. Mr. Tsitlik again referred to the redlined Development Plan to show that the property would be graded so that storm water would drain towards the center of the driveway, where a sand filter would dissipate storm water run-off, so as not effect the proposed landscaping. Ms. Dopkin also interjected that the Developer has an obligation to make sure that the trees lining the driveway survive.

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, 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 Exhibit 2, 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. As to the requested waivers, based on the concurrence of the relevant County agency representatives and the testimony and evidence submitted by the Developer, I am persuaded to grant the waiver of the open space requirement in lieu of the payment of a fee, and the storm water management waiver. In my judgment, the granting of the relief in each case is appropriate and will not have any detrimental impacts on the health, safety, or general welfare of the locale.

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 “JKBA, LLC PROPERTY” redlined Development Plan, accepted into evidence as Developer’s Exhibit 2, shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County, this 9<sup>th</sup> day of July, 2009, that the “JKBA, LLC PROPERTY” redlined Development Plan, marked and accepted into evidence as Developer’s Exhibit 2, and the requested waivers, be and are hereby APPROVED, subject to the following:

1. The Development must comply with the agreement entered into by Ms. Magliocca and the Developer. The agreement submitted into evidence as Developer/Magliocca Exhibit 1 is meant only as proof of an agreement between the parties and is not a final representation of such agreement.
2. Development of the property, including the aforementioned final agreement between Ms. Magliocca and the Developer, must comply with all Environmental Regulations enumerated in the Baltimore County Code and is subject to the oversight of the Department of Environmental Protection and Resource Management.

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

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

THB:pz