

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
N/S Joppa Road West, 2400' N/W Old Court		
Road and E Baltimore Beltway (I-695)	*	ZONING COMMISSIONER
(2100 West Joppa Road)		
	*	FOR
8 th and 9 th Election Districts		
2 nd Council District	*	BALTIMORE COUNTY
Mark O. Knott	*	Case No. VIII-731
<i>Legal Owner/Developer</i>		

* * * * *

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before the Hearing Officer/Zoning Commissioner of Baltimore County for a public hearing on a development plan 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 development plan applicant and legal owner of one of the subject property's existing residential lots, Mark O. Knott, submitted for approval a red-lined development plan prepared by Century Engineering, Inc. The subject property is located on the north side of and adjacent to West Joppa Road and to the east and south of I-695 in the Lutherville area of Baltimore County. The site contains approximately 19.97 acres, more or less, split-zoned D.R.1 and D.R.2, which is comprised of a total of three (3) existing residential lots approved by a minor subdivision plan in 1999. The majority of the property, 19.24 acres, is zoned D.R.1, and the remaining 0.36 acres is zoned D.R.2. No new residential lots are proposed by this development plan; the only subdivision proposed is the subdivision of Mr. Knott's existing lot (labeled "Lot 3" on the development plan) for financing purposes, which will result in a reduction of Lot 3's acreage to 4.4± acres and placement of the remaining acreage into a parcel. This new parcel is labeled "Parcel A" on the development plan. No change to the other existing lots is proposed by this development plan. This proposal is more particularly described

on the one sheet, red-lined development plan submitted and accepted into evidence as Developer's Exhibit 1.

By way of brief history, Baltimore County approved the property's existing residential lots by a prior minor subdivision plan in September of 1999. A copy of this minor subdivision plan was submitted and accepted into evidence as Developer's Exhibit 2. As shown and indicated on Developer's Exhibit 2, three (3) residential lots were approved in 1999 and are labeled on the 1999 minor subdivision plan as "Lot 1," "Lot 2," and "Lot 3." Mr. Knott is the legal owner of Lot 3, and one of his siblings, Henry J. Knott, III, and his wife are the legal owners of Lots 1 and 2. At the time of this plan approval in 1999, Lots 1, 2, and 3 were comprised of 1.70± acres, 2.40± acres, and 15.4± acres, respectively. Presently, each lot is in the same configuration approved in 1999 and comprised of the same acreage shown on Developer's Exhibit 2. Lot 1 was then and remains located adjacent to and on the north side of West Joppa Road. Lot 2 is located adjacent to and to the north of Lot 1, with an in-fee connection to Joppa Road along the eastern boundary line of the overall tract, between Lot 1 and this tract boundary. Lot 3, the largest of the subject property's three (3) lots, is located the furthest from Joppa Road, with an in-fee connection to Joppa Road located along the western boundary line of the overall tract. As shown on Developer's Exhibit 1, Lots 2 and 3 are each improved with a single-family dwelling. Although one single-family dwelling is permitted by right on Lot 1 by the approval of the 1999 minor subdivision plan, this dwelling has yet to be constructed.

As to the history of the project, a concept plan was prepared, and a conference held on August 11, 2008. As the name suggests, the concept plan is a schematic representation of the proposed development plan and is reviewed by and between representatives of the applicant and the reviewing County agencies at the Concept Plan Conference (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 September 22, 2008, at the Towson Public Library. Subsequently, a development plan is prepared, based upon the comments received at the CPC and CIM and submitted for further review at a Development Plan Conference (DPC), which, again, is held between the applicant's consultants and the reviewing agencies. In this case, the DPC was held on March 11, 2009, and comments were submitted by the appropriate County reviewing agencies. Following the DPC, a revised development plan (the "red-lined development plan") incorporating these comments is submitted at the Hearing Officer's Hearing, held before me on April 2, 2009.

Appearing at the public hearing required for this project were Mark O. Knott, owner/Developer of the property and Michael J. Pieranunzi, RLA, LEED AP, Landscape Architect with Century Engineering, Inc., the consultants who prepared the development plan. Robert A. Hoffman, Esquire and David H. Karceski, Esquire, with Venable, LLP, appeared as legal counsel for Developer. 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 Putty, Project Manager; Dennis Kennedy, Development Plans Review; Brad Knatz, Land Acquisition; and Aaron Tsui, Zoning Review Office. Also appearing on behalf of the County were Jenifer Nugent, Office of Planning (OP); Jeff Livingston, Department of Environmental Protection and Resource Management (DEPRM); and Jan Cook, Department of Recreation and Parks (R&P). Acting Lt. Don W. Muddiman, Baltimore County Fire Marshall's Office, and Steven D. Foster,

Chief Engineering Access Permits Division of the State Highway Administration, were represented at the hearing through prior correspondence.

Several citizens from the surrounding locale appeared as interested persons. They included Neil F. Lemon; Peggy Squitieri, on behalf of the Ruxton-Riderwood-Lake Roland Improvement Association (RRLRIA); Edwin Gregory; Patricia Ohler Hoffman; Marcia P. Treece, individually and as President of the Village Green Community Association; Senior Pastor George W. Raduano, Dominick Garcia, Esquire, Elder Board Member, with Trinity Assembly of God of Baltimore City, and Thomas B. Peace. Testimony and evidence offered by both sides as well as issues raised and arguments advanced were recorded by Bob Shocket, Court Reporter with Gore Brothers Reporter Services.

Pursuant to B.C.C. Sections 32-4-227 and 228, which regulate the conduct of the Hearing Officer's Hearing, I am required, first, to determine what, if any, issues or comments remained unresolved as of the date of the hearing before me. Mr. Karceski, on behalf of the development plan applicant, indicated that there were two (2) unresolved issues. The first issue identified by Mr. Karceski related to application of the local open space requirements contained in the County Code to the development plan. This issue, however, was resolved by the addition of red-lined note to Developer's Exhibit 1, as explained below. The other issue identified by Mr. Karceski was that the Environmental Impact Review (EIR) section of DEPRM had not received a forest conservation worksheet for review prior to this public hearing. The development plan applicant indicated that this forest conservation worksheet would be submitted to DEPRM immediately following the public hearing in this case, and resolution of this outstanding DEPRM review is also discussed below. Otherwise, the applicant was not aware of any unresolved issues with regard to the red-lined development plan.

Having reviewed the red-lined modifications to the development plan (Developer's Exhibit 1), I then asked the particular County agency representatives in attendance to confirm whether they had any outstanding issues. With the exception of DEPRM, the representatives of the reviewing agencies identified no unresolved issues and recommended plan approval. I have summarized their responses below:

Office of Planning: Jenifer Nugent appeared on behalf of the Office of Planning and provided the Hearing Officer with a school impact analysis for the project as County Exhibit 1. Based on the results of that analysis, Ms. Nugent confirmed that this project is in compliance with the provisions of B.C.C. Section 32-4-103. Ms. Nugent also indicated that the subject property is located within the Ruxton Riderwood Lake Roland Design Review Area, as noted on Developer's Exhibit 1. However, no review by the Design Review Panel is required at this time because no new residential dwellings are proposed on Parcel A by this plan. Review by the County's Design Review Panel will only be required in connection with any new dwellings intended for Parcel A of the development plan and prior to the issuance of any building permits for Parcel A. It should be noted that a review by the Design Review Panel will not be required to construct a dwelling on existing Lot 1.

Bureau of Land Acquisition: Brad Natz appeared on behalf of the Bureau of Land Acquisition and confirmed that his agency had no outstanding issues with the red-lined development plan. Approval 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 on the red-lined plan, and there were no unresolved issues.

Development Plans Review: Dennis Kennedy appeared on behalf of the Bureau of Development Plans Review. Mr. Kennedy confirmed that the applicant's red-lined development plan met all of his Department's requirements and comments, and his Department recommended approval, provided that the Hearing Officer approves access for Lot 3 to Joppa Road by an existing right-of-way that serves this lot. Mr. Kennedy did comment that Lot 3, in its current configuration, does have in-fee access to Joppa Road and that the proposed change to Lot 3, as shown on Developer's Exhibit 1, will result in the elimination of this lot's in-fee connection to this public roadway. However, Mr. Kennedy acknowledged, on behalf of his Department, that use of an existing right-of-way is acceptable in lieu of maintaining an in-fee connection for a lot to a public roadway. The development plan applicant, as part of this public hearing, did ask me to approve Lot 3's access to Joppa Road by a right-of-way that pre-existed the submission of this development plan. My approval of this request, in accordance with B.C.C. Section 32-4-409, is addressed below.

Department of Recreation and Parks: Jan Cook appeared on behalf of the Department of Recreation and Parks and confirmed that his Department had no issues with the red-lined development plan, provided a note is added to Developer's Exhibit No. 1 regarding local open space. Mr. Cook acknowledged that no local open space is required for Lots 1, 2, and 3 and Parcel A, *at this time*, for approval of this red-lined development plan, based upon a letter signed by his Department's Director and accepted into evidence as Developer's Exhibit No. 3. However, if a new development plan is processed at a later date for approval of additional residential lots on Parcel A, the local open space required for the additional lot/s proposed on Parcel A will be determined at that time. Mr. Cook and the applicant agreed to the placement of

a note on the red-lined development in order to make clear that local open space requirements will be applied only to Parcel A and only at the time of development of Parcel A.

Department of Environmental Protection and Resource Management (DEPRM):

On behalf of DEPRM, Mr. Livingston confirmed that DEPRM's Storm Water Management and Ground Water Management sections had no outstanding issues with regard to the red-lined development plan. For the EIR section, Mr. Livingston made clear that EIR had not received a forest conservation worksheet from the Developer's consultant and that EIR will need to review this worksheet in connection with approval of the development plan. Mr. Livingston had no issue with this public hearing proceeding in the meantime, pending review and approval of the forest conservation worksheet.

Following the public hearing, DEPRM's David Lykens, Supervisor of Development Coordination, provided this Hearing Officer confirmation on May 20, 2009 that the EIR section has reviewed the forest conservation worksheet for this development plan and is now in a position to recommend approval of Developer's Exhibit 1. DEPRM confirmed for this Hearing Officer that the forest conservation requirement may be satisfied either by a fee-in-lieu payment or other appropriate means, such as forest conservation planting bank.

Because all of the residential lots shown on this development plan were approved by the prior 1999 minor subdivision plan and only Lot 3 would be subdivided by approval of the development plan in this case, I find that the forest conservation requirement for the overall property must be met prior to the issuance of any grading or building permit(s) for the development of Parcel A. The forest conservation requirement will not need to be met prior to the issuance of grading or building permits for Lot 1, Lot 2, or Lot 3, which are entitled to such permits now by virtue of the prior approved minor subdivision plan. To ensure that the forest

conservation requirement for this development plan is met at the appropriate time, I will impose the following condition in my Order below:

The Baltimore County Forest Conservation requirement is 5.8 acres, which will be met either by a fee-in-lieu payment in the amount of \$101,059.00 or other appropriate means, such as a forest conservation planting bank. The afforestation/reforestation obligation required for this 19.6 acre site shall be met prior to the issuance of any grading or building permit(s) for the development of Parcel A.

This condition to my order is appropriate due to the limited purpose for this development plan and the prior minor subdivision plan for this property, which approved the three (3) existing lots (Lot 1, Lot 2, and Lot 3) in 1999.

Moving on to the formal portion of the hearing, the applicant asked Mr. Pieranunzi, landscape architect with Century Engineering, to present the red-lined development plan. Mr. Pieranunzi provided a description of the property and the surrounding area and then introduced the development A proposal shown on Developer's Exhibit 1. The overall tract that is subject to this development plan is comprised of three (3) existing residential lots. As outlined above in this opinion, Mr. Pieranunzi explained that only existing Lot 3 will be subdivided by this development plan for financing purposes and the remaining acreage associated with Lot 3 will be re-labeled as a parcel, which is labeled "Parcel A" on the red-lined development plan. As stated above, no new residential lots are proposed as part of the applicant's development plan; existing Lots 1, 2, and 3 were approved as part of the prior approved minor subdivision plan (MS99-075M) in 1999.

In response to questioning by Mr. Karceski, Mr. Pieranunzi addressed Parcel A specifically and future development of the parcel explaining that another development plan and public hearing before the Hearing Officer will be required in the future to re-label Parcel A as a lot and/or to subdivide Parcel A into more than one residential lot for the construction of

residential dwellings on the parcel. Mr. Pieranunzi did identify a note provided on the red-lined development plan, which confirms that another development plan and Hearing Officer's Hearing will be required in order to develop Parcel A. Mr. Pieranunzi then offered his opinion that, with the red-lined changes to the development plan, Developer's Exhibit 1 fully complies with the development regulations contained in the Baltimore County Code and all applicable policies, rules, and regulations.

Mr. Pieranunzi also confirmed, through his expert testimony, that allowing Lot 3 to be served by an existing right-of-way rather than an in-fee connection to Joppa Road is permitted by the Baltimore County Code. B.B.C. Section 32-4-409 addresses certain requirements for residential lots and allows for a residential lot to be served by a right-of-way rather than an in-fee connection to a public roadway. It is B.C.C. Section 32-4-409(c), specifically, that permits the Hearing Officer to approve access to a residential lot by a right-of-way that pre-exists the submission of a development plan. As shown on Developer's Exhibits 1 and 2, Lot 3 is now served by a right-of-way that connects the lot to Joppa Road, which is labeled "EXISTING EASEMENT – USE IN COMMON FOR INGRESS, EGRESS & UTILITIES FOR LOTS 1, 2, & 3." Mr. Pieranunzi addressed the current and proposed configuration of Lot 3 in this context. The applicant's proposal to reduce the acreage of Lot 3 and re-label the remaining acreage as a parcel will result in a change to the configuration of Lot 3. While Lot 3's acreage will be reduced and its in-fee connection to Joppa Road will also be eliminated, the right-of-way that serves Lot 3, in its current configuration, will continue to serve the lot for access purposes to Joppa Road.

Developer prepared two (2) additional exhibits, Developer's Exhibits 5 and 6, to clearly show the proposed change to Lot 3 and confirm that the lot in its new configuration will continue

to be served by the existing right-of-way to Joppa Road. Developer's Exhibit 5 shows Lot 3 in its current configuration, with an in-fee connection to Joppa Road. The pre-existing right-of-way for Lot 3 to Joppa Road is also shown on Developer's Exhibit 5. Developer's Exhibit 6 shows Lot 3 in the proposed configuration with no in-fee connection to Joppa Road and its reduction in acreage. Developer's Exhibit 6 also shows the pre-existing right-of-way in the same location shown on Developer's Exhibit 5 and confirms that Lot 3 will continue to be served by this right-of-way, as permitted by B.C.C. Section 32-4-409(c). Because Lot 3, in its proposed configuration, will comply with the requirements of B.C.C. Section 32-4-409, this Hearing Officer will approve access to the lot by the pre-existing right-of-way to Joppa Road in lieu of requiring an in-fee connection.

Next, I gave the citizens in attendance at the public hearing the opportunity to ask any questions about the project. Those in attendance did make it clear to this Hearing Officer that they did not attend the public hearing in this case to oppose the applicant's development plan but rather to understand what could occur on Parcel A in the future. Their questions related to the following: (1) the density permitted on Parcel A as shown on development plan and (2) where access to a public roadway would be possible for any future residential lots proposed on Parcel A, upon development of that parcel. Again, it was made clear that, even to construct one dwelling on Parcel A, another development plan and public hearing before the Hearing Officer will be required. With regard to the total number of dwellings permitted across Parcel A, Mr. Pieranunzi referred to a note on the development plan that addressed the permitted density associated with Parcel A. Mr. Pieranunzi further explained to the individuals in attendance that the density calculations provided for Parcel A on Developer's Exhibit 1 had been reviewed for compliance with the Baltimore County Zoning Regulations (B.C.Z.R.) by the Zoning Review

Office, which, as indicated in this Opinion above, recommended approval of the red-lined development plan. For all questions related to vehicular access for Parcel A in the future, Mr. Pieranunzi explained that a determination on such access to the parcel is premature at this time. Mr. Pieranunzi did identify locations on the development plan where access to a public road would be possible but, again, establishment of access for Parcel A will be determined in the future and in connection with any residential development of Parcel A.

The Baltimore County Code (B.C.C.) 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. With the testimony of Mr. Pieranunzi and the concurrence of the different County agencies, I find that the red-lined development plan is in compliance with the development regulations and all applicable policies, rules and regulations. With regard to the request to allow Lot 3 to be served by a pre-existing right-of-way, as identified on the red-lined development plan and outlined above, I will approve this request. Therefore, having identified no remaining unresolved or outstanding issues, Developer has satisfied its burden of proof and is entitled to approval of the development plan.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the Baltimore County Zoning Regulations (B.C.Z.R.) and Article 32, Title 4 of the Baltimore County Code, the red-lined development plan shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by the Zoning Commissioner / Hearing Officer for Baltimore County this 21st day of May 2009, that the red-lined development plan for the **2100 WEST JOPPA ROAD PROPERTY**, identified herein as Developer’s Exhibit 1, be and is hereby APPROVED; subject to the following conditions:

1. The following additional red-lined note shall be placed on Developer's Exhibit 1 by Century Engineering, Inc.:

"The Baltimore County Forest Conservation requirement is 5.8 acres, which will be met either by a fee-in-lieu payment in the amount of \$101,059.00 or other appropriate means, such as a forest conservation planting bank. The afforestation/reforestation obligation required for this 19.6 acre site shall be met only prior to the issuance of any grading or building permits for the development of Parcel A."

2. The imposition of the above condition is due to the unusual facts and circumstances that are peculiar to this case, including, among others, the property's 1999 minor subdivision plan that preceded this development plan approval. I wish to clarify that this Hearing Officer's decision to impose Condition No. 1 is not legal precedent that may be cited as such in another development plan case(s).

IT IS FURTHER ORDERED, that the request for Lot 3 to be served by a pre-existing right-of-way to a public road in lieu of an in-fee connection to a public road, in accordance with B.C.C. Section 32-4-409(c), is hereby GRANTED.

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 of
Baltimore County