

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
N side of Forge Road, W of Winkler Street	*	HEARING OFFICER
11 th Election District		
5 th Councilmanic District	*	FOR BALTIMORE COUNTY
(DAJANI PROPERTY)		
	*	
Ricardo and Donna Dajani		
<i>Developer</i>	*	Case No. XI-1051

* * * * *

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.”). Ricardo and Donna Dajani, the developers of the property (“Developer”), submitted for approval a development plan prepared by Taylor, Wiseman & Taylor known as the “Dajani Property,” for property located on the north side of Forge Road, west of Winkler Street, in the Perry Hall area of Baltimore County. The Developer proposes two lots on 2.59 acres of land, more or less, zoned D.R.1 -- for a total of four lots.¹ Details of the proposed development are more fully depicted on the original Development Plan filed at the Development Plan conference that was marked and accepted into evidence as Developer’s Exhibit 1, and the redlined Development Plan that was presented at the hearing and 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 May 29, 2007, in the County Office Building. As the name suggests, the concept plan is a schematic

¹ The property was once a 4.7 acre parcel that was subdivided into three lots (one larger lot and two smaller lots) pursuant to a minor subdivision. The owners of the larger lot now desire to subdivide their lot into one additional lot, for a total of four lots.

representation of the proposed 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 October 1, 2007, at the Perry Hall Public Library located at 9440 Belair Road. Members of the development team and the County’s representative attended, and members of the community were invited to attend as well. 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 further. The DPC occurred on August 27, 2008. The Hearing Officer’s Hearing for this proposed development was then held on September 18, 2008 in Room 104 of the Jefferson Building located at 105 West Chesapeake Avenue in Towson.

Certifications contained within the case file indicate that the property was properly posted with a sign on September 6, 2008 providing 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, the property owner and Developer, Donna Dajani, appeared along with John A. Staley, a property line surveyor with Taylor, Wiseman & Taylor. Francis X. Borgerding, Jr., also appeared as attorney for the Developer. There were no Protestants or other interested citizens in attendance at the hearing

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: Darryl Putty (Project Manager), Dennis Kennedy (Development Plans Review), Joe Merrey (Zoning Review Office), and Ron Goodwin (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 Bruce Gill 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 comments 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. Mr. Borgerding, 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. Mr.

Borgerding then indicated it was his understanding that all agency comments had been addressed except for issues related to review of the Plan by DEPRM. In particular, he indicated that the Environmental Impact Review Section of DEPRM was currently reviewing the revised Plan but had not yet issued its approval. In addition, a revised forest conservation plan had been submitted and was also pending review by DEPRM.

There being no interested citizens in attendance at the hearing, I then asked the particular County agency representatives to state whether they had any outstanding issues. I have summarized their responses below:

Recreation and Parks: Bruce Gill appeared on behalf of the Department of Recreation and Parks and indicated that the required local open space for two residential units is 2,000 square feet or 0.05 acre, more or less, with 1,300 square feet of active open space and 700 square feet of passive open space.² Mr. Gill indicated that proposed developments with less than 20 units should be considered for a waiver and a fee in lieu of open space. He confirmed that the Developer had applied for a waiver of the local open space requirements pursuant to Section 32-6-108(c)(3)(ii) and (d) of the B.C.C. and that this waiver had been granted. A copy of the letter from the Department of Recreation and Parks dated August 21, 2008 granting the waiver was marked and accepted into evidence as Baltimore County Exhibit 3. The local open space fee of \$9,360.00 is to be paid prior to the recordation of the record plat for the property. On this basis, Mr. Gill testified that the Department of Recreation and Parks recommends approval of the redlined Development Plan.

Planning Office: Lloyd Moxley appeared on behalf of the Office of Planning. Mr. Moxley indicated that the proposed development was subject to the Performance Standards set

² Mr. Gill pointed out that only the new subdivision creating the two lots from the existing larger lot is subject to the open space laws because the minor subdivision that created the other two lots occurred prior to the enactment of the open space legislation.

forth in Section 260 of the B.C.Z.R., but that a pattern book was not necessary in this case with the addition of only a single lot; in this case, the submission of elevation drawings would be sufficient for the Planning Office to make its determination as to compliance with the Performance Standards prior to permits being issued. Mr. Moxley also indicated that a School Impact Analysis had been prepared and showed that Chapel Hill Elementary School was operating at 123.90% of state rated capacity, exceeding the 115% threshold for compliance with the adequate public facilities requirements. He also pointed out that based on his review, there was sufficient capacity at adjacent schools in the District in order to comply with adequate facilities requirements. The School Impact Analysis also revealed that Perry Hall Middle School is below capacity and Perry Hall High School is at 110% of state rated capacity, but still under the 115% threshold for compliance with the adequate public facilities requirements. A copy of the School Impact Analysis was marked and accepted into evidence as Baltimore County Exhibit 2. In light of these findings, Mr. Moxley 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 confirmed that there were still several outstanding issues related to DEPRM. He presented a copy of his agency's comments in anticipation of this hearing and indicated that the storm water management plan had been conditionally approved, but that the Environmental Impact Review Section was not yet able to

give its approval of the Plan. He also indicated that the revised forest conservation plan was also still under review. On that basis, Mr. Lykens indicated he believed the record could be kept open for a short period of time to enable the Developer to complete its submissions and for his department to complete its review.

Office of Zoning Review: Joe Merrey appeared on behalf of the Zoning Review Office. He indicated that all of his agency's comments were addressed on the redlined plan. He then indicated that his department recommends approval of the redlined Development Plan.

Land Acquisition: Ron Goodwin appeared on behalf of the Bureau of Land Acquisition. He indicated that there were no outstanding issues from his agency and that his department recommends approval of the redlined Development Plan.

Moving next to the more formal portion of the hearing, the Developer's land surveyor, John A. Staley, presented the redlined Development Plan. Mr. Staley, a property line surveyor with Taylor, Wiseman & Taylor confirmed his familiarity with the laws and regulations pertaining to residential and commercial development, particularly in Baltimore County, and was offered and accepted as an expert in land development and the necessary zoning and land use regulations and policies in Baltimore County. As Mr. Staley explained, he was directly involved in the evaluation and preparation of the development plan for this project, and he prepared the redlined Development Plan.

As to the plan itself, Mr. Kearney indicated that the property was once a five acre parcel and was purchased by Mr. Gardner from Mr. League in 1970. Shortly thereafter, Mr. Gardner granted a portion of the property as a right-of-way to Baltimore County along Forge Road. Mr. Gardner then sold the property to Mr. and Mrs. Donovan in 1983. In 1987, the Donovan's subdivided the 4.7 acre parcel into three lots. Lot 2 consists of 1.12 acres and Lot 3 consists of

0.98 acre. The remaining Lot 1 where the Donovan's resided consists of approximately 2.59 acres. In 1989, the Donovan's sold their property to Angelo Lucco and in 1999, Mr. and Mrs. Dajani purchased the property. As shown on the redlined Development Plan, the new Lot 1 will have approximately 1.167 acres and the proposed Lot 4 will have approximately 0.92 acre. Access to Lot 4 will be via a private driveway off Forge Road. The property will have access to public water and sewer services. Photographs that were marked and accepted into evidence as Developer's Exhibits 3A through 3R also show an existing natural forest buffer between Lot 1 and proposed Lot 4, as well as buffering from the road to Lot 4. The Developer proposes some additional landscaping as a buffer between Lot 3 and Lot 4.

Following his presentation of the plan, Mr. Staley offered his opinion that, based on his professional knowledge and experience, and but for the issues related to approval by DEPRM, 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. Staley confirmed, the redlined Development Plan had 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 undersigned agreed to keep the record open for a reasonable period in order to allow the Developer and DEPRM to resolve their outstanding issues if possible.

Shortly thereafter on November 3, 2008, the undersigned received a transmittal dated October 31, 2008 from Mr. Staley attaching a letter dated October 23, 2008 from Regina A. Esslinger, Supervisor with the Environmental Impact Review Section of DEPRM, indicating the plans submitted on October 6th and 15th, 2008 are both correct and therefore approved. A copy of the letter shall be marked and accepted into evidence as Baltimore County Exhibit 3. In

addition, on November 13, 2008, the undersigned received a final blacklined Development Plan dated November 7, 2008, incorporating the redlined changes in Developer's Exhibit 2, as well as subsequent revisions that further addressed County agency comments -- in particular the DEPRM comment concerning storm water management³. This final revised Development Plan shall be marked and accepted into evidence as Developer's Exhibit 2A. In light of the above submittals, there are no remaining outstanding issues associated with this plan.

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 presented by Mr. Staley, 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 final blacklined Development Plan, marked and accepted into evidence as Developer's Exhibit 2A, 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 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 blacklined final "Dajani Property" Development Plan, accepted into evidence as Developer's Exhibit 2A, shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner

³ Note 19 of the final blacklined Development Plan accepted into evidence as Developer's Exhibit 2A indicates that "[s]tormwater management requirements for this site are being met through the use of the roof top disconnect and non-roof top disconnect credits, as outlined in the Maryland 2000 Design Manual. A fee-in-lieu is being provided for the 0.0096 acre of impervious area that could not be treated."

for Baltimore County, this 13th day of November, 2008, that the DAJANI PROPERTY blacklined final Development Plan, marked and accepted into evidence as Developer's Exhibit 2A, 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