

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
E side of Cedar Lane, opposite		
Cedar Ridge Court	*	HEARING OFFICER
11 th Election District		
3 rd Councilmanic District	*	FOR BALTIMORE COUNTY
(ROBERT FREY PROPERTY)		
	*	
Robert Frey		
<i>Developer</i>	*	Case No. XI-1085

* * * * *

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.”). Robert Frey, the developer of the property (“Developer”), submitted for approval a development plan prepared by Kenneth J. Wells with KJ Wells, Inc., known as the “ROBERT FREY PROPERTY,” for property located on the east side of Cedar Lane and opposite Cedar Ridge Court, south of Bradshaw Road and southeast of Belair Road, in the Kingsville area of Baltimore County. 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 1.

The Developer proposes to develop the subject property into four lots on 9.294 acres of land, more or less, zoned R.C.5. The subject property was originally part of a minor subdivision that was granted approval in 1994 and recorded in the County’s database as Paradise Farm, number 93088. Mr. Frey, the legal owner, purchased Lot 1, the subject property, shortly after the aforementioned minor subdivision in 1994, as indicated in the Real Property Data Search contained in the case file. The Developer’s plan proposes new two-story, single-family detached

dwelling units on three of the proposed lots. The existing two-story dwelling on Lot 1 is to remain and the two-story tenant house is slated to be razed as indicated on the redlined Development Plan. As also shown on the plan, the three proposed lots are identified as Lot 1A (1.5 acres), Lot 1B (1.8 acres) and Lot 1C (2.2 acres). The existing two-story dwelling, remaining on Lot 1, consisting of 3.7 acres and addressed as 11531 Cedar Lane, was built in 1892 as shown on the Real Property Data Search. The tenant house was also built at approximately that time.

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 November 3, 2008 at 9:00 AM in the County Office Building. As the name suggests, the concept plan is a schematic 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 December 4, 2008 at 7:00 PM at St. Paul’s Lutheran Church located at 1022 Jerusalem Road, Kingsville, Maryland 21087. 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 consultants and County agency representatives to review and scrutinize the plan further. The DPC occurred on July 1, 2009 at 9:00 AM. The Hearing Officer’s Hearing for this proposed development was then scheduled for July 24, 2009 in Room 106 of the County Office

Building, 105 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.

Appearing at the public hearing in support of development plan approval was the Developer, Robert Frey, and his attorney, Neil Lanzi, Esquire. Also appearing in support of the development plan proposal was Kenneth J. Wells with KJ Wells, Inc., the land surveying and site planning firm that prepared the Concept Plan, the Development Plan, and the redlined Development Plan. Mr. Harry Monios, whose property is adjacent to and east of the proposed development, attended the hearing as an interested citizen. 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), Donna Thompson (Zoning Review Office), and William Miner (Bureau of Land Acquisition). Also appearing on behalf of the County were David Lykens from the Department of Environmental Protection and Resource Management (DEPRM); Jennifer Nugent 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. Lanzi, the Developer's attorney, presented a general overview of the plan and indicated 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 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: Bruce Gill appeared on behalf of the Department of Recreation and Parks and indicated that the proposed development is subject to Local Open Space requirements. The required local open space for the 4 units is 4,000 square feet or 0.09 acres, more or less -- 2,600 square feet active and 1,400 square feet passive. Pursuant to a letter dated July 14, 2009 from the Department of Recreation and Parks to the Developer's land use consultant, Mr. Kenneth J. Wells, the request for waiver was granted and a fee in lieu of \$ 13,720 must be paid to Baltimore County prior to recordation of the record plat. A copy of the letter

was marked and accepted into evidence as Baltimore County Exhibit 1. Hence, his department recommended approval of the redlined Development Plan.

Planning Office: Jennifer Nugent appeared on behalf of the Office of Planning. Ms. Nugent indicated that a School Impact Analysis was prepared by both the Developer and the Office of Planning and revealed that although Kingsville Elementary School, the applicable elementary school for the site, is projected at 187% enrollment capacity, the adjacent elementary schools -- Pine Grove, Carroll Manor, and Gunpowder -- all had sufficient space to accommodate future residents of the proposed development, Paradise Farm, thereby rendering the proposed development in compliance with Maryland's Adequate Public Facilities Act. This school impact analysis was marked and accepted into evidence as Baltimore County Exhibit 2. Ms. Nugent further indicated that the pattern book submitted to the Office of Planning by the Developer and marked and accepted into evidence as Baltimore County Exhibit 3 meets the necessary requirements of the residential performance standards. The Office of Planning did not otherwise have any additional comments and consequently recommended 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 the Developer's redlined plan met all of his departments septic system concerns, including the use of sand mounds, and as such, recommended approval of the redlined Development Plan.

Office of Zoning Review: Donna Thompson appeared on behalf of the Zoning Review Office. Ms. Thompson indicated that all of her agency's comments were addressed on the redlined plan and recommended approval of the redlined Development Plan.

Land Acquisition: William Miner appeared on behalf of the Bureau of Land Acquisition. Mr. Miner indicated that there were no outstanding issues from his agency and recommends approval of the redlined Development Plan.

Moving next to the more formal portion of the hearing, the Developer's land development consultant, Mr. Wells, 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. Wells explained, he 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. Wells proffered that the property consists of 9.49 acres, more or less, located in the Kingsville area of Baltimore County with access to the property via two separate ingress/egress driveways connected to Cedar Lane. The subject property is currently improved with a one-story tenant house and a two-story single-family dwelling. The proposed development would subdivide the subject property further into four lots. Lots 1A, 1B, and 1C would each respectively contain 1.5 acres, 1.8 acres and 2.2 acres, as shown on redlined Development Plan. These lots would all be improved with two-story, single-family dwellings. After the subdivision, Lot 1 will contain 3.72 acres and the existing tenant house is planned to be razed while the existing two-story 19th century single-family dwelling would remain. All four lots will share a use-in-common panhandle driveway. This driveway, as shown on the

development plan, is already in place and will be modified slightly and widened to accommodate the development. Mr. Wells also noted that in response to concerns from the community, no acceleration or deceleration lanes or sidewalks will be created, specifically as per the request of the Greater Kingsville Civic Association. Further, Mr. Wells opined that he designed the development with careful attention to preserving the unique environmental character of the property and surrounding area thereby minimizing the environmental and visual impact of the development. For example, the existing driveway will be extended to the newly created lots, but will meander around a number of existing, mature trees that the Developer desires to keep. The subject property will be served by a private septic system consisting of a conventional system on Lot 1C and sand mound septic systems on Lots 1A and 1B. Storm water management for the site will be via swales located on the northern edge of the property flowing into a 'rip rap' outfall located on the eastern corner of the subject property that will effectively disperse storm water evenly, eventually flowing to a nearby stream.

Mr. Wells indicated that based on his professional knowledge and experience, the redlined Development Plan marked and accepted into evidence as Developer's Exhibit 1 fully complies with the development regulations contained in the Baltimore County Code and all applicable policies, rules, and regulations. As Mr. Wells 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.

Following the presentation of the Developer's case, Mr. Harry Monios was given an opportunity to air any concerns he had with the Development Plan. Mr. Monios indicated that he was worried about the type and size of homes to be built on the subject property. Mr. Wells and Ms. Nugent responded to this concern by referring Mr. Monios to the Pattern Book accepted into

evidence as Baltimore County Exhibit 3. Mr. Wells further assured Mr. Monios that any home built must be compatible with the surrounding area and in compliance with the residential performance standards. Mr. Monios further indicated that due to the fact that his home is on a lower elevation than that of the subject property, he desired additional landscaping by the Developer to serve as buffer. Mr. Wells pointed out to Mr. Monios that a Forest Buffer Easement and Forest Conservation Easement already separated his property and that once grown in, would adequately visually buffer the properties.

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 1, 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 “ROBERT FREY PROPERTY” Development Plan, accepted into evidence as Developer’s Exhibit 1, shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County, this 28th day of July, 2009, that the ROBERT FREY PROPERTY

redlined Development Plan, marked and accepted into evidence as Developer's Exhibit 1, be and is hereby APPROVED subject to the following:

1. The Development must comply with all conditions enumerated on the redlined Development Plan accepted into evidence as Developer's Exhibit 1.

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