

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
E/side Transverse Avenue, W of		
Middle River Road	*	
(STILL MEADOWS)		HEARING OFFICER
	*	
15 th Election District		FOR
6 th Council District	*	
		BALTIMORE COUNTY
Stillskyes Superior Builder, LLC	*	
<i>Owner/Developer</i>		Case No. XV-892

* * * * *

HEARING OFFICER’S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before the Hearing Officer/Zoning Commissioner pursuant to the development review regulations contained Article 32, Title 4 of the Baltimore County Code (“BCC”) for consideration of the redlined Development Plan prepared by KjWells, Inc., on behalf of Stillskyes Superior Builders, LLC, property owner¹. The subject Development Plan proposes a residential community of five single-family detached dwellings located adjacent to Transverse Avenue, in the Middle River community of eastern Baltimore County. The subject property and proposed residential subdivision are more particularly shown on the redlined Development Plan/Schematic Landscape Plan introduced at the Hearing Officer’s Hearing and accepted as Developer’s Exhibit 1.

The proposed development has been reviewed in accordance with the process as provided in the development regulations contained within the BCC. Initially, a Concept Plan was submitted and a Concept Plan Conference was held thereon on February 7, 2007. As required, a Community Input Meeting was thereafter conducted on April 24, 2007. There occurred a delay

¹ The property was previously owned by Jacqueline Stillerman, however, after the filing of the Development Plan and prior to the Hearing Officer’s Hearing, the property was conveyed to Stillskyes Superior Builders, LLC.

from further consideration of this matter and thus a second Concept Plan Conference was scheduled and conducted on September 22, 2008. A second Community Input Meeting was convened on November 6, 2008. Both Community Input Meetings occurred at the Essex Public Library. Subsequently, a Development Plan was submitted and a Development Plan Conference was held thereon on May 27, 2009. The Hearing Officer's Hearing was conducted in its entirety on June 19, 2009. Appearing at the Hearing Officer's Hearing was Kenneth J. Wells, a surveyor and principle of KjWells, Inc. Mr. Wells appeared on behalf of Stillskyes Superior Builders, LLC. The Developer was represented by Lawrence E. Schmidt of Gildea & Schmidt, LLC. No opponents appeared at the hearing, however, Frederick Chadsey, an engineer representing the Julio family (adjacent property owners) appeared at the hearing as an interested person.

Additionally, representatives of the reviewing County agencies appeared at the hearing. These included Bruce Gill on behalf of the Department of Recreation and Parks, John Sullivan for Jennifer Nugent of the Office of Planning, Jeff Livingston from the Department of Environmental Protection and Resource Management, Dennis Kennedy from the Bureau of Development Plans Review, Joseph Merrey from the Zoning Office, and Gigi Hampshire from the Bureau of Land Acquisition. It should be pointed out that John Sullivan is also the project manager with the Department of Permits and Development Management (DPDM).

Testimony and evidence presented was that the subject property is an irregularly shaped lot, approximately 1.27 acres in area, zoned D.R.5.5. The property is located on the south side of Transverse Avenue in the Middle River community. Immediately to the west of the property is the campus of the Middle River Middle School. Much of the surrounding locale is residential in character.

Stillskyes Superior Builders, LLC, proposes development of the site with five single-family detached dwellings, as more particularly shown on the plan. Access to proposed Lots 1 and 2 will be via driveways which directly lead from Transverse Avenue. Moreover, a common driveway serving Lots 3, 4 and 5 is proposed and shown on the plan. Mr. Wells presented the plan and explained in detail the particulars thereof. He also noted that a portion of Transverse Avenue would be improved to accommodate the development. These improvements are of particular interest to Mr. Chadsey, who represents the Julio family as they own property on the other side of Transverse Avenue. That property is proposed for development with a townhouse community known as Greenwood Manor. In accordance with an agreement reached between the Developer and the Julio family, certain roadway improvements to Transverse Avenue and utility extensions will be completed in connection with the proposed development by Stillskyes Superior Builders, LLC. These improvements will ultimately be expanded and completed when the Julio property is developed. At the Hearing Officer's Hearing, the Developer through its representatives, indicated that there were no open issues and that the redlined Development Plan complied with all applicable requirements, regulations and standards for Development Plan approval in Baltimore County.

A brief comment is in order about the standard of review that the Hearing Officer must apply in this case. The Developer may argue that these rules are too strict, while the Community may contend that they are not strict enough. Regardless, they are what they are. If the Developer meets the regulations, approval of the plan must follow. Moreover, if the Community can show that the plan should be changed to appropriately mitigate an anticipated negative impact upon the locale, then a restriction/condition to the plan can be imposed.

Pursuant to Sections 32-4-227 and 32-4-228 of the Baltimore County Code (B.C.C.), which regulate the conduct of the Hearing Officer's Hearing, I am first required to identify any outstanding issues or unresolved agency comments. In this regard, the County agency representatives testified as follows:

Zoning Review – Joe Merry, on behalf of the Office of Zoning Review, indicated that his department reviewed the redlined plan and recommended approval.

Office of Planning - John Sullivan, on behalf of Jennifer Nugent and the Office of Planning, stated that all outstanding agency comments had been addressed. A revised pattern book evidencing compliance with the performance standards of Section 260 of the Baltimore County Zoning Regulations (B.C.Z.R.) was submitted and marked as Exhibit 2. He further indicated the plan was in compliance with Section 32-6-103 of the B.C.C. "Adequate Public Facilities – School Impact Analysis".

Department of Recreation and Parks - Bruce Gill appeared on behalf of the Department of Recreation and Parks and indicated that the Developer had requested a waiver of local open space requirements which had been reviewed and approved by his department. A letter dated June 8, 2009 confirming a waiver was introduced and marked as Baltimore County Exhibit 1, evidencing a fee of \$30,350.00 to be paid for this waiver.

Department of Environmental Protection and Resource Management (DEPRM) – Jeff Livingston, representative from DEPRM, indicated that there were no outstanding environmental (storm water management, ground water management and environmental impact review) issues and recommended approval of the plan.

Bureau of Plans Review (Public Works) - Dennis Kennedy appeared as the representative of the Bureau of the Development Plans Review, which reviews plans for the

Department of Public Works. He noted that the Developer will make certain improvements to Transverse Avenue and that roadway will ultimately be extended and fully improved by Mr. Chadsey's client. He identified no open issues.

Bureau of Land Acquisition – Gigi Hampshire appeared on behalf of the Bureau of Land Acquisition and found the plan to be compliant.

Mr. Chadsey requested the addition of a note to the plan clarifying the public improvements to be made. This note was added in open hearing. He indicated that his client was not opposed to approval of the project, conditioned on compliance with the agreement reference above between the parties.

It is to be noted that no zoning variances, special hearing or other relief was request in association was the development plan. Previously, the Developer obtained Special Variance approval for this project in Case No. 08-264-A. The special variance was required because the site is within the shed of a failing intersection (i.e., MD-Route 40/Pulaski Highway and Middle River Road). Under the County's Basic Services legislation, building permits and final Development Plan approval are not permitted until that intersection is no longer failing. However, in accordance with the provisions of Article 4A (Growth Management) in the Baltimore County Zoning Regulations (B.C.Z.R.) relief from the limitations imposed by that section can be obtained through the Special Variance process. By Opinion and Order of the Deputy Zoning Commissioner Thomas H. Bostwick dated April 25, 2008, a Special Variance was granted. That decision was not appealed and is final.

The Baltimore County Code (B.C.C.) provides that the "Hearing Officer shall grant approval of a Development Plan that complies with these development regulations and applicable policies, rules and regulations". B.C.C. Section 32-4-229. After due consideration of

the testimony and evidence presented by the Developer concerning the development proposal as well as the input of the various County agencies, and there being no issues or concerns raised by any community representatives or other persons, I find that the Still Meadows redlined development plan accepted into evidence as Developer's Exhibits 1 and 2 are in compliance with the applicable policies, rules and regulations. Specifically, I am persuaded by the testimony of Developer's engineer, Kenneth J. Wells, P.E. and his presentation of the Development Plan and the input from the relevant County agencies that this plan is in keeping with the spirit and intent of the Baltimore County Development Regulations and will not have a detrimental effect on the health, safety, and welfare of the public, or the surrounding locale. Therefore, having identified no remaining unresolved or outstanding issues that would prevent plan approval, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the Development Plan subject to certain conditions.

Pursuant to the advertisement, posting of the property and public hearing on the requested plan in accordance with the zoning and development plan regulations of Baltimore County as contained within Baltimore County Zoning Regulations (B.C.Z.R.) and Article 32, Title 4, of the Baltimore County Code (B.C.C.), the development plan shall be APPROVED consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County, this 10th day of July 2009, that the redlined development plan for the **STILL MEADOWS**, identified herein as Developer's Exhibit 1, 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.

WJW:dlw

 SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner/Hearing Officer
for Baltimore County