

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
E/S Headland Boulevard,		
North Blevins Avenue	*	ZONING COMMISSIONER
(Headland Estates)	*	OF
15 th Election District	*	
7 th Council District	*	BALTIMORE COUNTY
Carpentry Unlimited Homes, LLC	*	Case No. XV-894
<i>Owner/Developer</i>		

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HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for consideration of a development plan prepared by Site Rite Surveying, Inc. for the proposed residential subdivision of the subject property by Carpentry Unlimited Homes, LLC (Developer), with twelve single-family detached dwellings. The property is currently wooded, undeveloped and contains a combined net area of 2.965 acres, more or less, zoned D.R.5.5, located on the east side of Headland Boulevard (a paper street) just north of Blevins Avenue in Sparrows Point. The proposed development is more particularly described on the two-page, redlined development plan¹ submitted into evidence and marked as Developer's Exhibit 1.

As to the history of this project through the development review process, codified in Article 32 of the Baltimore County Code (B.C.C.), a concept plan, which, is a schematic representation of the proposed development is first prepared and a conference held by and between representatives of the Developer and the County. In this case, the first Concept Plan Conference

¹ It should be pointed out that Developer presented two (2) additional alternate development plans (marked for identification as Developer's Exhibits 2 and 3) on the morning of the hearing. These plans were not previously seen by the community or the County reviewing agencies as preconditioned by Baltimore County Code (B.C.C.) Section 32-4-225(a)(1)(ii) and (a)(2). These alternative plans depict different road layouts than as shown on Exhibit 1, the removal of paving from Headland Boulevard and an attendant 8-inch water line, etc. Accordingly, these plans (Exhibits 2 and 3) are not properly before me for consideration.

(CPC) was held on January 16, 2007. This initial plan showed access via Linwood Avenue into the subdivision by Estate Avenue, a new public road that terminated in a cul-de-sac. The 2010 Master Plan (Page 84) recommends that land development be such that it “plan for interconnecting streets and provide for multiple vehicular access to avoid concentrating traffic onto the collector system”. The Developer was advised by the Committee to eliminate the cul-de-sac and connect the proposed Estate Avenue to both Hammond Road and Linwood Avenue. In addition, the County wanted Headland Boulevard improved from the northwest property line to Blevins Avenue. As directed, a subsequent Concept Plan was submitted for review and approval at a Conference held again on September 17, 2007. Thereafter, as required, a Community Input Meeting (CIM) is conducted during evening hours at a public facility in the vicinity of the proposed development. The CIM provides an opportunity for residents of the locale to review and offer comment on the proposal. The CIM for this project was held on November 14, 2007 at the Chesapeake Terrace Elementary School. Afterward, a development plan is submitted for review and comment at a conference held again between the Developer and County agency representatives. Often, as was done here as previously discussed, the development plan has been revised to incorporate changes suggested at the CPC and/or CIM. The Development Plan Conference (DPC) in this case was held on November 19, 2008 and February 4, 2009. Following the DPC, a public hearing on the proposal is conducted before the Zoning Commissioner/Deputy Zoning Commissioner. The Hearing Officer’s Hearing was conducted before me on February 27, 2009. By agreement of all parties, the record of the case was held open for a period of approximately three (3) months to allow time for the Department of Environmental Protection and Resource Management (DEPRM) to review and comment on the forest conservation, environmental impacts, and storm water management proposed for this site. Written confirmation that the plan is “in compliance” with all applicable regulations and requirements was subsequently received from David Lykens, Manager, Development Coordinator,

DEPRM, on May 20, 2009. As required, this decision follows.

Appearing at the public hearing required for this project were Mark A. Fuchsluger, the managing member of the developer, Carpentry Unlimited Homes, LLC, and Deborah C. Dopkin, Esquire, counsel for the Developer. Also appearing was Vincent J. Moskunas, President of Site Rite Surveying, Inc., the consultant who prepared the development plan(s). Numerous representatives of the various Baltimore County agencies who reviewed the plan (Developer's Exhibit 1) attended the hearing, including the following individuals from the Department of Permits and Development Management (DPDM): Colleen Kelly, Project Manager; Dennis Kennedy, Development Plans Review; William Miner, Land Acquisition; and, Bruno Rudaitis, Zoning Review. 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 Bruce Gill, Department of Recreation and Parks (R&P). The Baltimore County Fire Department and the Maryland State Highway Administration (SHA) submitted only written comments. Appearing as an interested person was Harry J. Wujek, Jr., President of the North Point Peninsula Community Coordinating Council.

STANDARD OF REVIEW

A brief comment, in addition to my footnote above, is in order about the standard of review that the Hearing Officer must apply in this case. As noted in prior decisions issued by this Office, the development review regulations establish the "rules of the game" insofar as development in Baltimore County. 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 228 of the Baltimore County Code, which regulates the conduct at the Hearing Officer's Hearing, I am required to first identify any unresolved agency comments or issues. The issues and concerns raised at the hearing and in oral argument are addressed as follows:

DEVELOPER'S ISSUES

The issues raised by Developer's counsel were (1) the need for environmental impact reviews and approvals by DEPRM of the Storm Water Management and Forest Conservation Plan submittal prepared by Human & Rohde, Inc., (2) at what time does Xenia Road, a 30-foot wide paper road that borders along the property's eastern property line need to be closed and (3) a controversial constitutional issue which I explain briefly as follows. Ms. Dopkin presented legal argument that there was no reasonable nexus or legal requirement that justifies the County's conditioning plan approval on Headland Boulevard being paved by her client. She referred to this paper road as "a road to nowhere". Developer's Exhibit 5 was submitted to show that the County has approved a number of minor subdivisions bordering on Headland Boulevard without requiring those Developers to pave portions of the paper street. Alternate Plans (Exhibits 2 and 3) were used to demonstrate that the connection to Blevins Avenue would be excessive in cost, environmentally improper, and unnecessary because of the existing Linwood Avenue and Hammond Road network. She asserted that there is no reasonable nexus between the proposed development and requested road improvements that warrant such a development condition and to do so would be violative of Maryland law as set forth in *Howard County v. JJM, Inc.*, 301 Md. 256 (1984). She requests a finding by this Hearing Officer that the County's request is unrelated proportionately to any benefit to the subdivision and therefore in effect an unconstitutional "exaction" upon her client.

COUNTY ISSUES

With the exception of DEPRM, the Office of Planning and the Bureau of Development

Plans Review, the County agency representatives who were present identified no outstanding issues or unresolved comments and recommended plan approval. Their responses are summarized as follows:

Plans Review - Dennis Kennedy, Supervisor of the Bureau of Development Plans Review of DPDM appeared and testified on behalf of the Department of Public Works (DPW). He advised that the subject property was set up for, and fronts on Headland Boulevard. The Director of Public Works prefers that Headland Boulevard be used for access from Blevins Avenue. The other frontage road, Xenia Road, must be closed. He further stated that Linwood Avenue should be connected to Headland Boulevard to promote circulation between developments. As to Hammond Road, he stated that connection to Headland Boulevard would be completed when the Blevins-Lincoln property is developed. Pointing to Developer's Exhibit 1, Mr. Kennedy stated that he knew of no unresolved agency issues concerning this plan and that with the redlined additions, it complied with all development plan comments, regulations and standards. With respect to the Alternate Plans (Exhibits 2 and 3), he pointed out that they were not presented to the public, did not represent changes in response to County or public comment, and were not reviewed by his agency prior to the hearing. He asked that if I decided to entertain these exhibits, that they be remanded back to the concept plan stage so that the community can be properly involved and the County can work out any issues prior to another hearing.

With respect to having safe and proper access to public roads, B.C.C. Section 32-4-107 provides that at the request of a department director, I may grant a waiver, provided certain enumerated criteria are met. Such criteria are as follows:

- (i)1. The size, scope, and nature of a proposed development does not justify strict compliance with this title;
2. A waiver would be within the scope, purpose, and intent of this title; and
3. All other county laws and regulations have been complied with; or

- (ii) Compliance with this title would cause unnecessary hardship.

The waiver to have 18 feet of macadam paving on the Developer's side of Headland Boulevard instead of the required 30 feet centered on a 50-foot right-of-way on this environmentally constrained site clearly contemplates the criteria listed in B.C.C. Section 32-4-107. Strict compliance with the grading and design requirements of the B.C.C. would cause unnecessary hardships. The nature of the development and the waiver requested makes it clear that it is within the scope, purpose and intent of the regulations. Accordingly, I will grant the waiver.

Department of Recreation and Parks – Bruce Gill appeared on behalf of his department and indicated that the Developer had requested a waiver of local open space requirements which had been reviewed and approved. A letter dated February 9, 2009 confirming a waiver was introduced and marked as Baltimore County Exhibit 1, evidencing a fee of \$72,840.00 to be paid prior to the recordation of the Record Plat.

Zoning Review – Bruno Rudaitis appeared on behalf of Aaron Tsui as representative of the Zoning Review Office and outlined the building envelope and lot sizes and stated that there were no unresolved issues and recommended approval.

Department of Environmental Protection and Resource Management (DEPRM) – On behalf of DEPRM, Jeff Livingston appeared and advised that there were outstanding issues. DEPRM is charged with the responsibility of reviewing and enforcing a wide range of environmental standards and regulations adopted by the County. These laws included regulations for the protection of forest and other environmental resources; storm water management; and ground water management. Mr. Livingston stated that while the ground water management aspects of the plan met his department's regulations, the storm water management division needed additional time to study revisions to the storm water calculations, which had been submitted, as

well as additional review time of environmental impact and forest conservation issues. It was his opinion that a continuance was not necessary, but that the record of this case be held open until the unresolved comments could be addressed.

Office of Planning – Jenifer Nugent appeared at the hearing on behalf of the Office of Planning, which is opposed to Alternate Plans 2 and 3, but with respect to Developer’s Exhibit 1, she stated that all outstanding agency comments had been addressed and therefore recommended approval. A pattern book (Baltimore County Exhibit 2) evidencing compliance with the performance standards of Section 260 of the Baltimore County Zoning Regulations (B.C.Z.R.) was received, and a School Impact Analysis (Baltimore County Exhibit 3) was prepared and evidenced sufficient capacity in accordance with the adequate public facilities requirements. (B.C.C. Section 32-6-103).

Bureau of Land Acquisition – William Miner appeared on behalf of the Bureau of Land Acquisition. He discussed the need of completing the road closing of Xenia Road prior to record plat. Counsel for Developer questioned Mr. Miner as to the timing for the road closure in view of the numerous homes that border along the paper street and the many encroachments that have resulted in the right-of-way over the years. In short, Ms. Dopkin wanted the ability to prepare a Final Development Plan and a plat to be recorded while the road closing process was underway. She stated her client has no control over the amount of time a road closing might take and any unnecessary delay would create a serious hardship on the Developer. After consulting with Shirley Murphy, Chief of the Bureau, Mr. Miner informed me that the road closing must precede the recording of the record plat.

COMMUNITY ISSUES

As noted above, the major issue identified by Mr. Wujek, on behalf of the community, related to safety and traffic issues and therefore, they support the Development layout proposed by

Developer's Exhibit 1 providing for the macadam paving of Headland Boulevard. He supported this design as it directed traffic out to Blevins Avenue as opposed to having the 100 or so cars making ADT (average daily trips) generated by this development going past the old established homes on Linwood Avenue and Hammond Road. On behalf of the North Point Peninsula Community Coordinating Council, he stated that the proposed road layout illustrated on Exhibit 1 would work better than the one access and a cul-de-sac that was originally contemplated. *See* Developer's Exhibits 7 and would be safer and provide more privacy for those existing homes in the area than the alternative circulation layouts preferred by Developer and presented as Alternate Plans (Exhibits 2 and 3).

DEVELOPMENT PLAN AND CONCLUSION

Ms. Dopkin introduced the plans and called upon Vincent Moskunas, who was accepted by this Hearing Officer as an expert in land planning and development in Baltimore County, to discuss the plans on behalf of the Developer. Mr. Moskunas described the subject property as a rectangular shaped tract of land consisting of 12 proposed lots on the east side of Headland Boulevard. The property consists of approximately 3 acres zoned D.R.5.5 that would allow 16 residential lots with 12 lots being proposed. As previously noted, the property is currently all wooded and undeveloped and will be accessed by a proposed loop road, Estate Avenue, that will be opposite Linwood Avenue, looping through the central portion of the site around to Hammond Road. The storm water management facility located on the south side of the tract has been designed to alleviate some of the current drainage problems in the area and will collect water runoff from the site and release it within a 24 to 48 hour time period. Headland Boulevard will be improved with macadam paving, 18-feet wide, which will run from the Dumbrowsky property to Blevins Avenue. Ingress and egress points will be opposite Linwood Avenue and Hammond Road from Blevins Avenue. The

Office of Planning and Department of Public Works requested the loop road with two (2) access points.

The road improvements and paving of Headland Boulevard to Blevins Avenue were the major issues raised at the hearing. The record of the case will show that the Developer modified its redlined plan to bring it into compliance with County concerns. The Alternative Development Plans submitted for consideration inappropriately showed the removal of roadway paving which had been on the plan since the beginning of the process. The community, the Office of Planning and the Department of Public Works prefer the improvements to Headland Boulevard and its connection to Blevins Avenue in accordance with the Bureau of Development Plans Review Policy Manual and the Master Plan. The connection will improve pedestrian and traffic circulation in the area, would provide a connection to adjacent communities, and would promote ease of access by emergency vehicles and other traffic. The leading Supreme Court case of *Dolan v. City of Tigard* 512 U.S. 374 (1994) reflects that the “reasonable nexus” issue typically arises where the local government asks, as a development condition, for *all road improvements* required for a development. Here, I find the County’s request for paving and road connection has a “nexus” to provision appropriate access to this subdivision. This conclusion can be of no comfort to the Developer who will be required to expend great time, effort and expense in making improvements to County land for general public use. The minimum 18' wide pavement in Headland Boulevard will extend from the north side of the loop road (Estate Avenue) opposite Linwood Avenue out to Blevins Avenue. I shall exempt paving on that portion of Headland Boulevard leading from the north side of Estate Avenue to the Dumbrowsky property from this requirement as this connection can be made when James and Phyllis Dumbrowsky develop their property.

Based upon the testimony and evidence offered, it is clear that there now remains no outstanding issues and that the redlined plan (Exhibit 1) complies with all Development Plan

requirements contained in Article 32, Title 4 of the B.C.C. I am persuaded, based upon the overwhelming evidence offered in this case, that the Development Plan complies with all State and County standards, rules and requirements for development and therefore should be approved.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Article 32 of the Baltimore County Code, the development plan shall be approved.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 20th day of May 2009 that the two-page, amended red-lined development plan for the **HEADLAND ESTATES PROPERTY**, 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