

<b>IN RE: DEVELOPMENT PLAN HEARING</b>	*	BEFORE THE
At end of East Riverside Avenue, N		
Bay Avenue	*	HEARING OFFICER
15 <sup>th</sup> Election District		
6 <sup>th</sup> Councilmanic District	*	FOR BALTIMORE COUNTY
<b>(WEST SHORE YACHT CENTER)</b>		
	*	
Marina Holdings LLC		
<i>Developer/Petitioner</i>	*	<b>Case No. XV-895</b>

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**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 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 Developer of the property, Marina Holdings, LLC (Joseph Taylor and Lisa Taylor, members) submitted for approval a development plan prepared by Colbert Matz Rosenfelt, Inc., for the property known as “West Shore Yacht Center.” The Developer is proposing the development of the subject property into 12 semi-detached single-family residential condominium units with the retention of an existing marina on 3.0412 acres, more or less. The overall tract is composed of three parcels as more particularly described on the plan. Much of the tract is zoned B.M.B., which allows residential density at a calculation based on a D.R.5.5 Zone. There is also a small area zoned D.R.3.5. The site is currently developed as a boat yard. The proposed development is more particularly described on the redlined Development Plan, which was marked and accepted into evidence as Developer’s Exhibit 1, as well as an amended redlined Development Plan marked and accepted into evidence as Developer’s Exhibit 3.

The property was posted with Notice of Hearing Officer’s Hearing on May 19, 2008 for

20 working days prior to the hearing in order to notify all interested citizens of the date and location of the hearing.

As to the history of the project, a concept plan of the proposed development was prepared and Concept Plan Conference (CPC) was held on February 5, 2007 at 9:00 AM in the County Office Building. As the name suggests, the concept plan is a schematic representation of the proposed subdivision and is initially reviewed by and between representatives of the Developer and the reviewing County Agencies at the CPC. Thereafter, as is also required in the development review process, notice of a Community Input Meeting (CIM) is posted and scheduled during evening hours at a location near the proposed subdivision to provide residents of the area an opportunity to review and comment firsthand on the plan. In this case, the CIM was held on April 18, 2007 at 7:00 PM at the White Marsh Public Library where representatives of the Developer and the County 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 further review and scrutinize the plan. The DPC occurred on May 28, 2008. The Hearing Officer's Hearing for this proposed development was first held on June 20, 2008 in Room 106 of the County Office Building. At that time, testimony was received from Mr. Matz regarding the plan, as well as the representatives of those County agencies that reviewed the plan.

It should be noted that the role of each reviewing County agency in the development review and approval process is to independently and thoroughly review the development plan as it pertains to their specific area of concern and expertise. These agencies provide comments to

the plan and make determinations where necessary as to whether the plan complies with 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.

Appearing at the requisite public hearing on June 20, 2008 in support of the Development Plan approval request was Joseph Taylor with the Developer, Marina Holdings, LLC, and Lawrence E. Schmidt, Esquire, attorney for the Developer. Also appearing on behalf of the Developer was Richard Matz, P.E. with Colbert Matz Rosenfelt, Inc., the engineering firm that prepared the plan. Appearing as interested persons at the June 20, 2008 hearing were Mark Hanley of 117 Lakefront Drive in Cockeysville, MD and John Roil of 9111 Satyr Hill Road in Baltimore, MD.

Also in attendance at the June 20, 2008 hearing were representatives of the various Baltimore County reviewing agencies, including the following individuals from the Department of Permits and Development Management: Colleen Kelly (Project Manager), Phil Martin (Development Plans Review), Joe Merrey (Zoning Review Office), and Bill Minor (Bureau of Land Acquisition). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Resource Management (DEPRM); Jenifer German Nugent from the Office of Planning; and Bruce Gill from the Department of Recreation & Parks. In addition, written comments were received from Lt. Roland Bosley, Jr. of the Baltimore County Fire Marshal's Office and Steven D. Foster on behalf of the Maryland State Highway Administration. These and other agency remarks are contained within the case file.

Pursuant to B.C.C. Sections 32-4-227 and 32-4-228, which regulates 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. Upon making inquiry to the Developer's attorney, Mr. Schmidt, he indicated that he was not aware of any unresolved issues with respect to the redlined Development Plan, but for a pending requested Variation of Standards. In this regard, the subject property is waterfront in character and subject to State and County regulations as it is within the Chesapeake Bay Critical Area (CBCA). The CBCA regulations mandate a 100-foot buffer from the shoreline to the footprint of area on the site proposed for development. Obviously, given the fact that this tract is a peninsula and its narrow width, the required buffer could not be provided. The Developer therefore requested a "Variation of Standards" from this requirement.

Pursuant to B.C.C. Section 32-4-231, the Hearing Officer is to refer any request for a Variation of Standards to the Baltimore County Planning Board for review in accordance with that Section of the B.C.C. By letter dated May 7, 2008, Zoning Commissioner William J. Wiseman, III referred the matter to the Planning Board and on the first hearing date (June 20, 2008) the Planning Board had not completed its review of this issue. Therefore, testimony and evidence was accepted on issues that were ripe for consideration at that time and then the hearing was continued for further proceedings after the Planning Board hearing and vote.

At the hearing on June 20, 2008, I inquired as to the particular County agencies and asked that they state whether there were any outstanding issues applicable to their particular agency. Their responses are summarized 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 the 12 units is 12,000 square feet or 0.28 acres more or less; 7,800 square feet active and 4,200 square feet passive open space. Mr. Gill also indicated that a proposed development involving 20 units or less should be

considered for a fee in lieu of open space if requested. He confirmed that pursuant to B.C.C. Section 32-6-108(c)(3)(ii) and (d), a waiver of local open space requirements was requested by the Developer to pay a fee in lieu of providing local open space. The Department granted that request as shown by the letter dated May 29, 2008, which was marked and accepted into evidence as Baltimore County Exhibit 1, and indicated that a fee of Seventy One Thousand Eight Hundred Twenty Dollars (\$71,820.00) is to be paid prior to the recordation of the Record Plat. Therefore, the Department of Recreation and Parks recommended approval of the amended redlined Development Plan.

Planning Office: Jenifer German Nugent appeared on behalf of the Office of Planning. Ms. Nugent indicated that a School Impact Analysis (SIA) was prepared by the Developer and reviewed by her office. The SIA was deemed acceptable by the Office of Planning. A copy of the SIA was marked and accepted into evidence as Baltimore County Exhibit 2. She also testified that the amended redlined Development Plan met all of her agency's standards and requirements and recommended approval of the plan.

Development Plans Review (Public Works): Phil Martin appeared on behalf of the Bureau of Development Plans Review. His agency reviews the plan for compliance with the requirements of the Department of Public Works. Mr. Martin confirmed that the Developer's amended redlined Development Plan met all of his department's requirements and comments and that his department recommended approval of the plan.

Department of Environmental Protection and Resource Management: Jeff Livingston appeared on behalf of DEPRM. Mr. Livingston confirmed that the Variation of Standards requirement was pending. Other than that issue, he advised that his department recommended approval of the amended redlined Development Plan. He noted that other divisions in DEPRM

(e.g. Stormwater Management Review and Ground Water Management) had also reviewed and approved the plan.

Office of Zoning Review: Joe Merrey appeared on behalf of the Zoning Review Office. Mr. Merrey indicated that there were some minor changes that needed to be made on the redlined plan and that they had been addressed on the amended redlined plan. He then indicated that his department recommended approval of the amended redlined Development Plan.

Land Acquisition: Bill Minor appeared on behalf of the Bureau of Land Acquisition. Mr. Minor indicated that there were no outstanding issues from his agency and recommended approval of the amended redlined Development Plan.

I then inquired of the two citizens in attendance at the hearing and was advised that they had no objection to the approval of the plan.

After the informal phase of hearing, the case was continued in order to accommodate the Variation of Standards request before the Planning Board. The hearing was then resumed on September 25, 2008. On that date, Mr. Schmidt advised that the Planning Board had conducted a public hearing on September 4, 2008 and voted to approve the Variation of Standards on September 18, 2008. Ms. Nugent from the Office of Planning confirmed the Planning Board's hearing, vote, and approval. The minutes of the Planning Board hearing were not available at the continued Hearing Officer's Hearing but subsequently the Office of Planning submitted written verification of the Planning Board's approval. Specifically, Ms. Nugent of the Planning Office forwarded a letter dated September 24, 2008 with attachments from Planning Director Arnold F. "Pat" Keller, as Secretary to the Planning Board, indicating that the Developer's Application for Variation of Standards is in compliance with State-mandated criteria for granting variances in the CBCA and recommends approval in accordance with DEPRM conditions as listed in that letter.

The letter, which was received in this Office on October 2, 2008, was marked and accepted into evidence as Developer's Exhibit 5.

Moving next to the more formal portion of the hearing, the Developer's engineer, Mr. Matz, presented the amended relined Development Plan. Mr. Matz testified that he is a professional engineer and a principle with the firm of Colbert Matz Rosenfelt, Inc. He also testified that he is very familiar with the laws and regulations pertaining to residential and commercial development and has been offered and accepted as an expert in numerous zoning and land development hearings. Mr. Matz was then offered and accepted as an expert in civil engineering, land development, and recognition and interpretation of the necessary zoning and land use regulations and policies in Baltimore County.

Mr. Matz testified that he was directly involved in the evaluation and preparation of the instant development plan. He attended the CIM, the CPC, the DPC, and met with representatives of the County reviewing agencies. He also prepared and sealed the amended redlined Development Plan marked and accepted into evidence as Developer's Exhibit 3. This plan shows the site constraints detailing the environmental areas and impacts, the development plan proposal itself, and the development plan notes.

Mr. Matz described the subject property, proposed development therein and surrounding locale in detail. He noted that the property is presently used as a boatyard and that there are boats stored on the property. The site is also improved with a pier that extends into Back River and contains 85 slips. There is also a marina building. The pier and slips and marina building will be retained. The land storage of boats will be discontinued and a 12 unit residential condominium development is proposed. Originally, fifteen units were proposed and laid out in a townhouse style. However, as the result of an agreement with the Office of People's Counsel

and the community, the residential development has been converted into 12 side-by-side semi-detached dwellings.

This agreement with People's Counsel and members of the surrounding community came about during a companion zoning case that was instituted for this project. Specifically, Mr. Schmidt advised that the Developer had filed Petitions for Variance and Special Hearing to address certain zoning issues (i.e. the proposed mix use of the property, available density, setbacks, yard areas, etc.). This matter (Case No. 07-421-SPHA) was heard by the then-Deputy Zoning Commissioner John V. Murphy who granted the relief pursuant to an order dated June 27, 2007. This decision was appealed by certain opponents to the Baltimore County Board of Appeals and People's Counsel also intervened. Following extensive negotiations by the parties, an agreement was reached and an Order issued by the Board of Appeals on July 25, 2008. A copy of this order was marked and accepted into evidence as Developer's Exhibit 6. This order resolved the zoning issues that had been presented and established the zoning parameters upon which the Development Plan is based.

In conclusion, Mr. Matz testified that the amended redlined Development Plan had been presented to County agency representatives and had addressed all of those agencies' comments. Finally, he offered his opinion that based on his professional knowledge and experience, the amended redlined Development Plan marked and accepted into evidence as Developer's Exhibit 3 fully complies with the development regulations, rules and policies contained in the Baltimore County Zoning Regulations (B.C.Z.R.) and the Baltimore County Code (B.C.C.).

The 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." B.C.C. Section 32-4-229.



After due consideration of the proffer of counsel and testimony presented by Mr. Matz concerning the development plan proposal, as well as the concurrence of the various County agencies, I find that the amended redlined Development Plan accepted into evidence as Developer's Exhibit 3 is in compliance with all applicable policies, rules, and regulations.

I am also persuaded by the evidence presented that the Development plan is in keeping with the spirit and intent of the 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, the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the redlined Development Plan. Further, pursuant to B.C.C. Section 32-4-231, I shall incorporate the conclusions and decision of the Planning Board (Developer's Exhibit 5) in approving the Variation of Standards that was granted pursuant to the Chesapeake Bay Critical Area regulations.

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 amended redlined "West Shore Yacht Center" Development Plan, marked and accepted into evidence as Developer's Exhibit 3, shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County, this 15<sup>th</sup> day of October, 2008, that the amended redlined "WEST SHORE YACHT CENTER" Development Plan, accepted into evidence as Developer's Exhibit 3 be and is hereby APPROVED; and,

It is further ORDERED, that pursuant to Section 32-4-231 of the Baltimore County Code

that the approval of the Baltimore County Planning Board of the Variation of Standards from the applicable Chesapeake Bay Critical Area Standards in Title 33 of the Baltimore County Code be and are hereby incorporated herein.

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