

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
N and S sides of Vandermast Lane, N side		
of Holly Neck Road	*	HEARING OFFICER
15 TH Election District		
6 TH Councilmanic District	*	FOR BALTIMORE COUNTY
(VANDERMAST PROPERTY)		
	*	
John and William Mitcherling		
<i>Developers</i>	*	Case No. XV-919

* * * * *

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.”). The property is owned by the Vandermast family and the Applicants include Ernest X. Vandermast on behalf of the Vandermast family, and John and William Mitcherling, the developers of the subject property (“Developer”). The Developer submitted for approval a development plan prepared by D.S. Thaler & Associates, Inc., known as the “Vandermast Property,” for property located on the north and south sides of Vandermast Lane and on the north side of Holly Neck Road in the Essex/Middle River area of Baltimore County. The Developer proposes 15 single-family detached dwellings on 58.8 acres of land, more or less, zoned R.C.5 (30.3 ± acres) and R.C.20 (28.5 ± acres). Details of the proposed development are more fully depicted on the redlined Development Plan, including a Schematic Landscape Plan, that was marked and accepted into evidence collectively as Developer’s Exhibits 1A through 1C.

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 October 29, 2007, in the County Office Building. As the name suggests, the concept plan is a schematic

representation of the proposal 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 November 27, 2007, at the Chesapeake High School. 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 October 29, 2008. The Hearing Officer’s Hearing for this proposed development was then held on December 17, 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 November 4, 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.

In addition to review of the proposed plan through the County’s development review and approval process, it should be noted that the proposed development is also subject to State Chesapeake Bay Critical Area regulations. Pursuant to Section 8-1801, et. seq. of the Natural Resources Article of the Annotated Code of Maryland, the Developers are required to seek an award of Growth Allocation in order to accommodate the proposed development. Maryland’s Critical Area law governs all property within 1,000 feet of the Chesapeake Bay and classifies the

property into one of three categories: RCA (Resource Conservation Area), LDA (Limited Development Area) and IDA (Intensely Developed Area). In the instant matter, and in order to adequately pursue the proposed development, the Developer has sought the conversion of 18 acres of the subject property from RCA to LDA. This parallel process of requesting a change in Growth Allocation classification was reviewed by the County in accordance with State and local law and was approved by the County's Growth Allocation Review Committee ("GARC"), the Baltimore County Planning Board, and the County Board of Appeals (the "Board"). Presently, the Board's Order, which represents the final local determination for Growth Allocation, has been appealed and is pending at the Circuit Court for Baltimore County.¹

At the required public hearing, William Mitcherling appeared as a representative of the Developer, along with the Developer's attorney, Lawrence E. Schmidt, Esquire from Gildea and Schmidt, LLC. Also appearing in support of the proposed development plan were David S. Thaler, professional civil engineer and the Developer's development plan consultant, Stacy McArthur, professional landscape architect, and Mark Vasil, all of whom are employed by D.S. Thaler & Associates, Inc., the firm that prepared the redlined Development Plan. There were also several Protestants in attendance at the public hearing that included Michael Novak, who owns property adjacent to the location of the proposed development plan. Mr. Novak was represented by Michael P. Tanczyn, Esquire, who also represented the Holly Neck Community Association, an organization that supports the overall development plan but objects to the location of a proposed cul-de-sac at the northeast end of the subject property. Dr. Rita Kurek, President of said Association, appeared and testified along with James Mitchell and Randy Mohr, a longtime

¹ Ultimately, the Growth Allocation request will be considered for final approval by the Chesapeake Bay Critical Area Commission, a division of the Maryland Department of Natural Resources. However, for the purposes of this proposed Development Plan, the issues surrounding the Growth Allocation Application are not before this Hearing Officer as part of this phase of the Development Plan review process.

business associate of Mr. Novak. Also appearing in support of Mr. Novak's opposition to the location of the proposed cul-de-sac was Don Mitten, a professional engineer with Richardson Engineering who was retained by Mr. Novak.

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: Vishnu Desai (Development Plans Review), Jeffrey Perlow and Aaron Tsui (Zoning Review Office), and Gigi Hampshire (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; Jan Cook from the Department of Recreation & Parks; Lieutenant Bosley from the Baltimore County Fire Marshal's Office, and Colleen Kelly, project manager from the Department of Permits and Development Management (PADM). In addition, written comments were received from 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 the agency's specific area of concern and expertise. The agencies specifically comment 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. Ms. McArthur, the Developer's landscape architect, 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. Ms. McArthur confirmed that this development plan requires Growth Allocation, and while the Developers have taken all necessary steps and have received an approval from the County Board of Appeals, their request will eventually be presented to the State Critical Area Commission. Ms. McArthur then indicated, based on her understanding, that all agency comments had been addressed, and that she 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: Jan Cook appeared on behalf of the Department of Recreation and Parks testified that there were no open issues from the Department of Recreation and Parks. As indicated in that agency's Development Plan Conference Comments, open space is not required for the subject property (*See*, Section 4A03.13.F.1.e. of the B.C.Z.R.). A copy of the Department's comments dated October 29, 2008 was marked and accepted into evidence as Baltimore County Exhibit 1.

Department of Environmental Protection and Resource Management (DEPRM): David Lykens appeared on behalf of DEPRM. He identified no open issues and indicated that the plan should be approved. He noted that the development of the property was subject to an award of

Growth Allocation for 18 acres of the site to be converted from RCA to LDA. Mr. Lykens confirmed that the request had been approved by the Board and that final approval was pending before the State Critical Area Commission. Hence, approval of the plan should be conditioned on the Commission's final Growth Allocation award. Storm water management issues were also reviewed and approved by DEPRM. As such, there were no open issues from any division of DEPRM and the Department recommends approval of the redlined Development Plan.

Office of Zoning Review: Jeffrey Perlow and Aaron Tsui appeared from the Zoning Office. They indicated that there were no open issues but requested that the Department of Planning clarify whether Section 4A03.13.C of the B.C.Z.R. permits only "villas" in the Back River Neck District or whether villas are permitted in addition to other units that are permitted as of right under the zoning classification. They also requested a clarification as to whether the density and bulk standards regulations are applicable.² There were no other open issues from this Department.

Development Plans Review (Public Works): Vishnu Desai appeared on behalf of the Bureau of Development Plans Review. Mr. Desai confirmed that the Developer's redlined plan meets all of his department's requirements and comments and that his department recommends approval of the redlined Development Plan. He also noted that the Developer has requested two Department of Public Works waivers, the first of which is for a 40 foot right-of-way for Holly Neck Road in lieu of the required 50 feet. The second is for a reduced paving width of 12 feet for the common driveway, which will serve proposed Lots 12 through 15. He indicated that his Department recommended approval of both waivers pursuant to Section 32-4-106 of the B.C.C. Thus, there are no open issues from PDM or the Department of Public Works.

² The Developer believes that the density regulations are applicable to this proposed development, and that there are 20 density units available and the Developer has proposed 15 units.

Planning Office: Jennifer Nugent appeared on behalf of the Office of Planning. She indicated that the project was subject to review by the Baltimore County Growth Alliance Review Committee (GARC) and the Critical Area Commission (CAC). The application for Growth Allocation was accepted for filing and the GARC recommended approval of the application and issued a report on May 1, 2008. DEPRM forwarded the GARC report to the Baltimore County Planning Board for review and held a public hearing on May 15, 2008. The Planning Board voted unanimously to recommend the proposal, and the County Board of Appeals held a hearing and approved the application. As previously stated, while all County agencies have approved the request for growth allocation, a determination will ultimately be made by the state CAC. Ms. Nugent also indicated that the plan met other considerations evaluated by the Office of Planning, as stated in their comment dated December 17, 2008 which was marked and accepted into evidence as Baltimore County Exhibit 2. Specifically, the School Impact Analysis was reviewed and approved, as well as compliance with the Residential Performance Standards contained within Section 260 of the B.C.Z.R. The Office of Planning also reviewed the Developer's Pattern Book that was marked and accepted into evidence as Developer's Exhibit 2 and approved that submission.

Finally, Ms. Nugent indicated that her Department's interpretation of Section 4A03.13.C of the B.C.Z.R. is that villas are permitted as an additional type of housing in the Back River Neck District rather than as the exclusive type of dwelling unit only. She noted a prior case, (Holly Neck Limited Partnership – Case No. XV-82), wherein single-family homes and villas were both approved by the Zoning Commissioner/Hearing Officer. She also offered her Office's independent determination that given the wording of the regulation at issue, it does not appear that development in the Back River Neck District should be restricted only to villa style units. This

issue was referenced an email dated December 4, 2008 from Office of Planning Director Pat Keller to Aaron Tsui in the Zoning Review Office, which was marked and accepted into evidence as Baltimore County Exhibit 3. Mr. Keller indicated that Council Bill 5-2006 (also know as the “Berger Bill”) allows an additional building type in the R.C.5 Zone when a project is located in the Back River Neck District and is receiving Growth Allocation. This newly allowed building type, other than single-family detached, is the villa (townhome). Hence, there are no open issues from the Office of Planning and that agency recommends approval of the redlined Development Plan.

Fire Department: Lt. Roland Bosley appeared on behalf of the Fire Department and indicated that the plan met all of the Fire Marshal’s requirements. He also indicated when questioned by counsel for the Developer that the location of the proposed cul-de-sac was acceptable and meet fire code requirements. In addition, when questioned by counsel for Protestant, Mr. Novak, as to whether Protestant’s planned location for the cul-de-sac would be acceptable, Lt. Bosley indicated that either location would meet fire code requirements.

Land Acquisition: Gigi Hampshire testified on behalf of the Bureau of Land Acquisition and testified that the plan met all of her agency’s concerns and comments and should be approved.

In sum, all of the reviewing agencies of Baltimore County have reviewed the plan and find the same is in full compliance with all required development standards, regulations and provisions. All Baltimore County agencies have recommended approval of the plan and the two associated waivers.

Protestants: Two nearby neighbors, Michael & Denise Novak, were represented by Michael Tanczyn, Esquire at the public hearing. The Novaks did not indicate that they opposed the proposed development plan in its entirety, and in fact support approval of the project given its

potentially positive impact on the surrounding area. However, the Novaks expressed opposition to the Developer's plan to locate a cul-de-sac immediately adjacent to their property, which lies at the northeast end of the Vandermast property. At this portion of the hearing, Mr. Tanczyn presented an overview of the Novaks' request that the cul-de-sac be relocated approximately 450 feet southeast to a location immediately adjacent to the common driveway which serves proposed Lots 12 through 15 as indicated on the development plan. As will be explained in greater detail, the Novaks presented several witnesses in support of their request for such a condition or modification of the plan.

Moving next to the more formal portion of the hearing, the Developer's landscape architect, Stacey McArthur with D.S. Thaler & Associates, Inc., testified and presented an overview of the redlined Development Plan and Schematic Landscape Plan. Ms. McArthur, a registered landscape architect, confirmed her 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 Ms. McArthur explained, she was directly involved in the evaluation and preparation of the development plan for this project, and she prepared and sealed the redlined Development Plan for the Developer.

As to the plan itself, Ms. McArthur indicated that the subject property under consideration is known as the "Vandermast Property" and is located in the Cedar Beach Community of eastern Baltimore County. The property, which is approximately 58.7 acres (+/-) in area, abuts and is immediately north of Holly Neck Road and has water frontage on Sue Creek and Cedar Creek. The property is split zoned with 30.3 acres of the site zoned R.C.5 and 28.4 acres zoned R.C.20. Collectively, under the density/development rights conferred by the B.C.Z.R., the property has the

zoning capacity to be developed with 21 dwellings, and the property currently contains approximately 20 shore homes. The existing homes, many of which are in a state of disrepair, were originally constructed several generations ago and were used as summer cottages.

Ms. McArthur testified that the Developer proposes to raze all of the existing shore homes in order to construct a new community of 15 larger single-family detached dwellings. The new dwellings will be built in the previously developed areas in the vicinity of the existing shore homes to limit disturbance to the natural areas of the property. Due to the stringent environmental regulations applicable to this site, owing to its location within the Chesapeake Bay Critical Area, much of the property will be preserved in its natural state through a series of environmental easements. The proposed homes will be served by public water and public sewer, and the use of grinder pumps.

As shown on the site plan that was prepared by D.S. Thaler & Associates, Inc., the new homes are to be accessed via an existing public road (Goff Road to Vandermast Lane) which leads into the interior of the property from Holly Neck Road. Direct access to the 15 lots will be provided via cul-de-sacs and/or shared driveways on which the new lots will front. As required by Baltimore County's Department of Public Works standards, Goff Road to Vandermast Lane is to remain a public road which will extend across the entire width of the property.

Twelve of the lots will have piers leading into Sue Creek. Three of the dwellings will not have piers, due to the steep topography of that portion of the property that falls dramatically towards the water. The details and notes of the proposed development are more particularly shown on the redlined Development Plan. Renderings, elevations, floor plans, site details, and suggested materials for the proposed dwellings are shown in the Pattern Book that was accepted into evidence as Developer's Exhibit 2. The Developer also submitted an aerial photograph of the

Vandermast property and surrounding area that was marked and accepted into evidence as Developers' Exhibit 5.

Following her presentation of the development plan, Ms. McArthur offered her opinion that, based on her professional knowledge and experience, the three page, redlined Development Plan and Schematic Landscape Plan marked and accepted into evidence as Developer's Exhibits 1A through 1C fully complies with the development regulations contained in the Baltimore County Code and all applicable policies, rules, and regulations. As Ms. McArthur pointed out, the redlined Development Plan was presented to each of the County agency representatives and each agency confirmed that all issues were addressed and resolved on the redlined plan. Accordingly, the Developer requested approval of the 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. In this case, there was little dispute over the fact that the development plan should be generally approved. After due consideration of the testimony presented by Ms. McArthur, 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 and Schematic Landscape Plan marked and accepted into evidence as Developer's Exhibits 1A through 1C, 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 my general approval of the development plan, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the redlined Development Plan.

While there was little dispute over the fact that the redlined Development plan should

generally be approved, Protestants through their attorney, Mr. Tanczyn, proceeded to request that the Hearing Officer impose a condition on the proposed development plan pursuant to Section 32-4-229(d) of the B.C.C. Due to professed environmental and public safety concerns, Mr. Tanczyn requested that the Hearing Officer impose a condition of approval that the cul-de-sac that is currently proposed to be located directly adjacent to the Novaks' property be relocated approximately 450 feet southeast -- and would still be able to adequately serve proposed Lots 12 through 15.

In support of their request for condition, Protestants first presented testimony from Dr. Rita Kurek, President of the Holly Neck Conservation Association. Dr. Kurek testified that if the cul-de-sac is constructed immediately adjacent to the Novak property, it would essentially be shielded from public view and would create a potential location for dumping garbage and other illicit activities. Dr. Kurek stated that overall, this development is a major improvement to the surrounding area and she supported approval of the project. However, she felt that the Developer had indicated a willingness to relocate the cul-de-sac earlier on in the process, and believed that relocation was in the interest of public safety and environmental preservation.

Protestants also presented testimony from James Mitchell, a former police officer who has lived in the surrounding community for over 34 years. Mr. Mitchell is a former president of the Holly Neck Conservation Association, and he now conducts monthly cleanups of the surrounding community where he has found that dumping off of Vandermast Road is a legitimate issue for concern.³ Numerous tires and bulk garbage items have been discovered on and around

³ As shown on the redlined Development Plan, Vandermast Road (not to be confused with Vandermast Lane) is a road that runs south of and perpendicular to the main entry into the proposed development, Vandermast Lane. Vandermast Road is a street that also intersects with Holly Neck Road to the south and is adjacent to a small inlet of Cedar Creek. According to a number of witnesses, its quick access in and out of the area -- via Vandermast Lane and Holly Neck Road -- unfortunately makes it an attractive dumping ground for scofflaws. As a result, the Developer plans to close and remove this road and perform environmental mitigation near the Cedar Creek inlet.

Vandermast Road, and Mr. Mitchell expressed his concern that creating a cul-de-sac that is hidden from public view may provide additional locations for dumping. Additionally, the shielded location could create additional public safety concerns because cars could be parked at the cul-de-sac out of the general public view.

Donald Mitten, a professional engineer with Richardson Engineering, provided expert testimony for Protestants. Mr. Mitten reviewed three potential locations for the cul-de-sac and compared the associated environmental impact created by the construction of impervious surfaces. Mr. Mitten expressed an opinion that relocating the cul-de-sac to the location proposed by Protestants could decrease the amount of impervious surface associated with the development plan by up to 4,000 square feet. On cross examination, Mr. Mitten did concede that his site plan, which was marked and accepted into evidence as Protestants' Exhibit 11B, was not drafted according to the proper scale and therefore may have miscalculated the additional impervious surface. Additionally, Mr. Mitten did not compare the overall environmental impact of relocating the cul-de-sac, such as the effect on storm water management. Nevertheless, he expressed an opinion that the Developer could reduce the amount of impervious surface in the critical area if the cul-de-sac were relocated.

Randy Mohr, a former design engineer and business partner of Mr. Novak, testified that he drafted an email to Mr. Thaler concerning the cul-de-sac and never received a response. Mr. Mohr explained that the Novaks were concerned with the Developer locating a cul-de-sac immediately adjacent to their property and have offered to pay the cost of relocation. His testimony essentially overviewed an ongoing dialogue between the parties concerning the relocation issue, and the alleged failure of the Developer and its representatives to continue the lines of communication on this issue.

Finally, Michael Novak testified in support of his request for condition. Mr. Novak expressed concern with his family's safety given that the cul-de-sac would not be visible from any of the nearby homes. In the past, Mr. Novak experienced a problem with teenagers loitering and dumping garbage near the location of the proposed cul-de-sac. He offered to pay the cost of relocation and acknowledged that to this point, the developers had never explained why they have decided against relocating the proposed cul-de-sac.

After Protestants rested their case, the Developer called Mr. Thaler, a professional engineer, Development Plan Consultant, and real estate broker. Mr. Thaler testified that he is familiar with the site and has been involved in the evaluation and preparation of the development plan, and that in his expert opinion, relocating the cul-de-sac would cause a greater environmental impact than the currently proposed location. Under the present redlined plan, the Developer has taken advantage of the property's existing grades to reduce impervious surface. Mr. Thaler explained that if the cul-de-sac were to be relocated, substantial disturbance next to the paving of the road would be required in order to properly channel storm water. Thus, the Developer argued that the environmental impacts of relocating the cul-de-sac would be greater and not less.

Additionally, Mr. Thaler testified that relocation of the cul-de-sac would cause a technical problem in that the remainder of the road between the cul-de-sac and the Novak property would be "in limbo." Mr. Thaler explained that, generally, a cul-de-sac is a technique for terminating a public road so that fire, ambulance, and service vehicles will have a place to turn around. If the cul-de-sac were to be relocated, the Developer would be creating a panhandle driveway and would essentially be forced to transfer property to the Novaks. Mr. Thaler could not cite any authority that permits the Hearing Officer to unilaterally create a situation that either forces a developer to transfer land or extend an easement to a nearby resident.

Finally, as far as public safety is concerned, Mr. Thaler explained that the Novak property is approximately 5 acres and has been proposed for subdivision and the construction of an additional home. If the property is rezoned R.C.5 as the Novaks have requested, there will be homes within view of the cul-de-sac as proposed on the site plan, thereby alleviating any concern that the cul-de-sac would be shielded from the view of the public.

In lieu of closing argument, the record in this case was kept open until January 7, 2009 for the Developer and Protestants to submit a memorandum on the cul-de-sac issue. Memoranda were received on that date and are contained within the case file, and the parties' written positions are incorporated into the record of this case.

The authority of the Hearing Officer to impose conditions to a development plan is outlined in Section 32-4-229(d) of the B.C.C. The Code states that the Hearing Officer may impose a condition if it will: (1) protect the surrounding and neighboring properties; (2) is based upon a request by a participant at the hearing; (3) is necessary to alleviate an adverse impact on the health, safety or welfare of the community that would be present without the condition; and (4) does not reduce the number of dwelling units inappropriately. Moreover, the condition may be imposed only "on factual findings that are supported by evidence." *Id.*

In this case, I am not convinced that relocating the cul-de-sac will satisfy any of the aforementioned criteria, and I am therefore not inclined to condition approval of the development plan on said relocation. First, I am not convinced that relocating the cul-de-sac will provide any protection for surrounding and neighboring properties, especially in light of the fact that many of the existing problems have apparently been caused by residents of the existing "shore shacks" that will be razed and removed prior to the implementation of the development plan. Given the size and location of the proposed dwellings, I am convinced that the resulting area will not lend itself

to the type of contemptuous individuals or groups likely to engage in dumping or loitering on surrounding properties. As Protestants themselves conceded, the development plan represents a tremendous improvement to the surrounding area.

Additionally, I am not convinced that the proposed location would decrease the environmental impact on the surrounding area given the uncontradicted expert testimony of David Thaler, who indicated that substantial grading would be required to implement appropriate storm water management practices. While Mr. Mitten established that the current location may cause a slight increase in impervious surface, he admittedly did not examine any impact of relocation on grading and storm water management.

As evidenced by the testimony elicited at the public hearing, as well as the memorandum submitted in lieu of closing argument, Protestants appear to have placed great weight on the language contained in the GARC Report, which was marked and accepted into evidence as Protestant's Exhibit 2. However, Protestants are certainly aware that the GARC Report only represents the comments of a recommending agency and is not binding in any further proceedings. In fact, the GARC Report was only accepted into evidence at the public hearing for these limited purposes. Thus, reliance on ancillary statements contained within the report, as well as several nonbinding correspondences between the Developer and Protestants on the relocation issue, appears misplaced in the case at hand. Considering the criteria outlined in Section 32-4-229(d) of the B.C.C., I do not find that the requested condition to relocate the proposed cul-de-sac is appropriate.

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 "Vandermast Property" Development Plan, accepted into evidence as Developer's

