

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
E/S Vincent Farm Lane,		
S Ebenezer Road	*	ZONING COMMISSIONER
(Vincent Farm)		
	*	OF
15 th Election District		
6 th Council District	*	BALTIMORE COUNTY
Gambrill Farms Two, LLC	*	Case No. XV-297
<i>Owner/Developer</i>		

* * * * *

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 Daft McCune Walker, Inc. for the proposed residential subdivision of the subject property by Gambrill Farms Two, LLC (Developer), with 27 single-family detached dwellings. The property currently consists of open agricultural fields having a watercourse with associated wetlands and some woodland and contains a combined gross and net area of 14.8 acres, more or less, zoned D.R.3.5, R.C.2 and R.C.3, located in the Middle River area of the County. The proposed development is more particularly described on the two-page, redlined development plan, entitled “Development Plan, Vincent Farm, Resubmittal”, submitted into evidence and marked as Developer's Exhibit 7. While no zoning variances are requested or needed, the Developer seeks approval of Public Works’ Waivers to exempt sidewalks along the east side of Vincent Farm Lane, to allow a 40-foot wide right-of-way in lieu of the required 50-feet for the subdivision’s new internal road and that a 28-foot wide area of paving be approved in lieu of the required 30-feet of paving for the new road.

This project has an unusual development review process history. As 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 Concept Plan Conference (CPC) was held on December 3, 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. A CIM for this project was held on January 23, 2008 and again on March 5, 2008, both at the Victory Villa Community Center. Afterward, a development plan is submitted for review and comment at a conference held again between the Developer and County agency representatives. Often, and as was done here, 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 October 8, 2008. Following the DPC, a public hearing on the proposal is conducted before the Zoning Commissioner/Deputy Zoning Commissioner.

A Hearing Officer's Hearing was first conducted before me on October 30, 2008. Appearing at that public hearing on behalf of the Developer were Judd Maslack, Doug Eshelman and James Joyce, with Gambrill Farms Two, LLC; and Jennifer R. Busse, Esquire and G. Scott Barhight, Esquire, with Whiteford, Taylor & Preston, L.L.P., counsel for the Developer. Also appearing were Kristy Bischoff, P.E., Eric Chodnicki and Mitch Kellman, with Daft McCune and Walker, Inc., the consultants who prepared the plan(s). Numerous representatives of the various Baltimore County agencies who reviewed the plan attended the hearing. Appearing as Protestants or interested persons were Timothy S. McCubbin, President, Vincent Farm Bird River Neighborhood Association, Thomas M. Germroth, Patricia C. And James F. Davenport, Deborah A. Betley, Nancy L. Pieper, Martin J. Jones, Robert S. Funk, and Robert J. Romadka, Esquire. The official record of the October 2008 proceeding was recorded by Ronda Thomas, a

court reporter with Gore Brothers (410-837-3027).

By agreement of all parties, the record of the case was held open, for what ended up being a period of approximately thirteen (13) months, to allow the Department of Environmental Protection and Resource Management (DEPRM) to review and comment on the forest buffer variance request and associated filings. The original forest buffer variance request was denied by DEPRM by letter from Jonas Jacobson, Director, and dated February 24, 2009 (identified as DEPRM tracking no. 06-08-656); as was an associated decision regarding the Forest Conservation Worksheet, Preliminary Forest Conservation Plan and Forest Buffer Protection Plan, denied by letter dated March 30, 2009. The Developer appealed DEPRM's decisions¹, but later withdrew those appeals (via letter from G. Scott Barhight, Esquire dated June 30, 2009 and as evidenced by the Order of Dismissal issued by the Board of Appeals dated July 1, 2009).

The Developer filed a revised forest buffer variance request on June 2, 2009, which was approved in part and denied in part by DEPRM via its written decision issued on July 1, 2009 (identified as DEPRM tracking no. 06-09-888). That DEPRM decision was appealed by both the Developer and a group of neighbors and the Vincent Farm Bird River Neighborhood Association, represented by J. Carroll Holzer, Esquire. Specifically, the decision approving part of the request was appealed by J. Carroll Holzer, Esquire (Case No. CBA-10-007) and the decision denying part of the request was appealed by the Developer (Case No. CBA-10-008).

A series of substantial negotiations between the Developer and the Vincent Farm Bird River Neighborhood Association (VFBRNA) occurred which resulted in a Settlement Agreement which was entered into between the parties. A copy of that Settlement Agreement shall be

¹ The Developer's appeal of DEPRM's February 24, 2009 decision was issued in County Board of Appeals (CBA) Case Number CBA-09-010; the appeal of DEPRM's March 30, 2009 decision was never issued a CBA Case Number.

incorporated herein as a condition to the approval of the development plan (*See* Joint Exhibit). As part of this Settlement Agreement, the parties agreed to dismiss their respective appeals of the July 1, 2009 DEPRM decision.

On October 22, 2009, this Hearing Officer issued an Order of Remand, finding that a revised plan containing significant modifications had been filed for “Checkprint Filing” with the Department of Permits and Development Management (DPDM), and therefore ordering that the amended plan be remanded for a new Development Plan Conference and subsequent scheduling for a Hearing Officer’s Hearing. On October 27, 2009, and on behalf of Gambrill Farms Two, LLC, Daft McCune Walker, Inc. filed the Revised Development Plan package with DPDM. A Development Plan Conference was held on November 25, 2009. A Hearing Officer’s Hearing was then scheduled, advertised and posted, and occurred on December 18, 2009. Susan A. Kambouris, a court reporter with Gore Brothers (410-837-3027) attended and recorded the proceedings. As required, this decision now follows.

Appearing at the public hearing required for this project on behalf of Gambrill Farms Two, LLC was Doug Eshelman and G. Scott Barhight, Esquire, with Whiteford, Taylor & Preston, L.L.P., counsel for the Developer. Also appearing were Kristy Bischoff, P.E. and Mitch Kellman with Daft, McCune and Walker, Inc., the consultants who prepared the development plan(s). Numerous representatives of the various Baltimore County agencies who reviewed the plan 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, Aaron Tsui, Zoning Review. Also appearing on behalf of the County were Lloyd Moxley, Office of Planning (OP);

Jeff Livingston, Department of Environmental Protection and Resource Management (DEPRM); and Jan Cook, 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 interested persons were Timothy S. McCubbin, President, Vincent Farm Bird River Neighborhood Association; Thomas Germroth, and Horst K. Kohlstadt. They were represented by J. Carroll Holzer, Esquire.

STANDARD OF REVIEW

A brief comment 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

Mr. Barhight, on behalf of Gambrell Farms Two, LLC, identified no outstanding agency issues or comments. Testimony was received from Kristy Bischoff, the professional engineer who prepared the redlined Resubmittal Development Plan for this property. She described the

site and certified the redlined plan met all regulations and requirements for development in Baltimore County. Ms. Bischoff briefly reviewed the redlined changes made to Developer's Exhibit 7 as well as Developer's Pattern Book, marked as Baltimore County Exhibit 5.

COUNTY ISSUES

With the exceptions of the Bureau of Development Plans Review and the Zoning Review Office, the County agency representatives who were present corroborated Mr. Barhight's comments. Each of the representatives indicated that there were no outstanding issues or unresolved comments and recommended plan approval. I have summarized their responses below:

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). Mr. Kennedy explained that his department was in favor of each of the Developer's Public Works' waivers with the exception of the waiver relating to sidewalk along the internal loop of Gambrill Circle that fronts on Lots 23 - 27. Public Works desired that the sidewalk be provided so as to provide consistency within the neighborhood and prevent the possibility that later in time, residents will demand it be installed. Mr. Kennedy acknowledged that safety was not his department's concern. Everyone agreed that any residents of Lots 23 - 27, including school aged children walking to the adjacent Vincent Farm Elementary, will need to cross the street at some point and are most likely to do so right outside of their own homes. Notably, this project's file evidences that the proposed development was evaluated by the Baltimore County Design Review Panel and that during their meeting on July 16, 2008, the members recommended the plan be approved without sidewalk in front of Lots 23 -27. Upon questioning, Mr. Moxley from the Office of Planning confirmed that, as documented within his office's Development Plan

Comment dated November 25, 2009, his office supports the Community's request that this portion of sidewalk be eliminated and that this is how the Design Review Panel approved the project.

Department of Recreation and Parks – Jan Cook appeared on behalf of his department and indicated that all of his agency's comments had been addressed.

Zoning Review – Aaron Tsui appeared as representative of the Zoning Review Office. He objected to the "fence line" shown on the plan between Lots 23 & 24 and 26 & 27 and explained that during the review of an application for a fence permit for one of these lots, his office would not catch the restriction noted on the plan since a review of a development plan is not part of the review of a typical residential fence permit application. I note that the Baltimore County Landscape Manual, within paragraph 3 at page 56, requires that fencing along residential side yards must be set back 10-feet from the right-of-way. This requirement is the reason the plan includes the 10-foot setback for the fence line between Lots 23 & 24 and 26 & 27. These particular lots have a side yard that is adjacent to the right-of-way. In light of the fence permitting procedures explained by Mr. Tsui, I will impose, as a condition of approval of this project, that the Developer create a restriction in the covenants for this development, specifically relating to Lots 23, 24, 26 and 27, that any fence running adjacent to Gambrill Circle (and therefore located in the side yards) comply with the Baltimore County Landscape Manual's requirement that such fencing be set back 10-feet from the right-of-way.

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.

Office of Planning – Lloyd Moxley appeared at the hearing on behalf of the Office of Planning and stated that all outstanding agency comments had been addressed and therefore recommended plan approval. A revised pattern book evidencing the elimination of the two lots along Vincent Farm Road and compliance with the performance standards of Section 260 of the Baltimore County Zoning Regulations (B.C.Z.R.) was received (Developer’s Exhibit 1), and a School Impact Analysis was prepared and showed sufficient capacity in accordance with the adequate public facilities requirements. (B.C.C. Section 32-6-103) Mr. Moxley submitted the revised School Impact Analysis as Baltimore County Exhibit 4.

Bureau of Land Acquisition – William Miner appeared on behalf of the Bureau of Land Acquisition and stated that his agency’s comments had been addressed.

WAIVERS

As noted above, the development plan involves requests for a number of waivers from the Bureau of Development Plans Review Policy Manual pursuant to B.C.C. Section 32-4-107(a) which permits the Hearing Officer, upon request from a department director, to grant a waiver of any or all requirements of Subtitles 3, 4 or 5 of Title 32 of the Baltimore County Code. Developer first requests a waiver to permit a 40-foot wide right-of-way in lieu of the required 50-foot for the internal paved road, identified on the plan as Gambrill Circle. The second involves a request to permit a 28-foot wide paving in lieu of the required 30-feet within the 40-foot right-of-way (again for Gambrill Circle). The next waiver request seeks permission to eliminate the sidewalk, curb and gutter along the Property’s road frontage on Vincent Farm Lane. The Department of Public Works has recommended its approval of all three of these waiver requests.

No neighbor or community member spoke in opposition to any of the waiver requests.

Based on the evidence and testimony presented in support of the waiver(s), I find sufficient justification for the requests and, pursuant to B.C.C. Section 32-4-107(a), the waivers are hereby granted as conditioned by the Department of Public Works.

The Developer had previously requested one additional waiver request, but during the hearing and on behalf of Gambrill Farms Two, LLC, G. Scott Barhight orally withdrew this request which sought approval to eliminate the requirement for sidewalk in front of Lots 23 - 27. These lots are interior to the site and are all located inside of the loop road previously identified as Gambrill Circle. *See* Developer's Exhibit 8 that demonstrates changes to the plan to accommodate this portion of sidewalk. The sidewalk along the outside of the loop road, and therefore that sidewalk fronting each of the other twenty-two lots, was not affected by this request and will be constructed as shown on the plan. Mr. Barhight indicated that his client was withdrawing this waiver request due to the fact that it was not supported by the Department of Public Works. As further explained below, the Community requested that this waiver in fact be granted. Mr. Barhight explained that his client was not opposed to the Community's request.

COMMUNITY ISSUES

As noted, the community leaders and members present requested that, as a condition of approval of the redlined Resubmittal Development Plan, the undersigned waive the requirement for sidewalk in front of Lots 23 - 27. Again, everyone agreed that there was no safety concerns related to this request, and notably the Design Review Panel members approved the project's layout showing the elimination of this portion of sidewalk and the Office of Planning supported the Developer's waiver in this regard. I will grant the Community's request and condition approval of the plan on the elimination of the sidewalk in front of Lots 23 -27. While the

Developer withdrew its waiver in this regard, Section 32-4-229(d) of the B.C.C. provides the Hearing Officer with the authority to impose conditions when approving a development plan where, as is the case here, the condition is proposed by a participant and the evidence provided supports a finding that the imposition of a condition is appropriate to alleviate a perceived adverse impact on the welfare of the neighborhood. Specifically, Mr. McCubbin served on the Design Review Panel that approved this project. From his testimony and the other evidence presented in this case, I am satisfied that without the waiver, the community would be detrimentally impacted since the layout would not be as compatible with regard to driveway length and house size. The shape of the island containing these five lots along with the layout of the lots within the island create both the impracticality of providing sidewalk and the practical need for the sidewalk's elimination. In order to satisfy the concerns raised by the Bureau of Plans Review and Department of Public Works, I will require the Developer to provide Baltimore County with an easement over the area needed to permit any future construction of a sidewalk in front of Lots 23 – 27. Mr. Kennedy indicated that this would provide some satisfaction to his department's concerns.

CONCLUSION

Based upon the testimony and evidence offered, it is clear that there now remains no outstanding issues and that the redlined plan (Exhibit 7) 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 Resubmittal Development Plan complies with all State and County standards, rules and requirements for development and therefore should be approved. All parties are to be commended for their efforts, which resulted in the

production of a plan that is appropriate for this property. Thus, the Development Plan and requested Waivers shall therefore be approved consistent with the comments contained herein.

Pursuant to the advertising, posting of the property, and public hearing(s), and pursuant to 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 4th day of January 2010 that the two-page, redlined development plan for the **VINCENT FARM PROPERTY**, identified herein as Developer's Exhibit 7, be and is hereby APPROVED subject to the following conditions:

1. The Developer is permitted to proceed; however, the Developer is hereby made aware that doing so shall be at its own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein could be rescinded.
2. The Settlement Agreement, entered into and executed on December 18, 2009, by and between Iron Horse Properties, Inc., owner and developer of the Vincent Farm Development, and the Vincent Farm Bird River Neighborhood Association (VFBRNA), Timothy S. McCubbin, individually and as President of the VFBRNA, Stephen R. Alpin, Horst K. Kohlstadt, and James F. Davenport, collectively referred to herein as the Neighbors, shall be attached to the original Order kept in the Zoning Commissioner's Office and adopted and incorporated by reference into this Order and made a part thereof.
3. As is shown on the redlined development plan, the project shall proceed without the construction of sidewalk in front of Lots 23 - 27. The Developer shall, however, dedicate to Baltimore County an easement area on these lots sufficient to permit the future construction of a sidewalk and revise the plan accordingly.
4. The Developer shall impose a restrictive covenant relating to Lots 23, 24, 26 and 27 that notes any fence erected adjacent to the Gambrill Circle right-of-way will comply with the requirements of the Baltimore County Landscape Manual that such fencing be set back 10-feet from the street right-of-way.

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