

IN RE: **DEVELOPMENT PLAN HEARING**
N side of Glenn Falls at NE corner of
Woodens Lane
4th Election District
3rd Councilmanic District
(Autumn Ridge)

Woodenburg Land & Cattle Company
Applicant/Developer

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **HOH Case No. 04-486**

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HEARING OFFICER’S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Administrative Law Judge for a hearing pursuant to Section 32-4-227 of the Baltimore County Code (B.C.C.). In accordance with the development regulations codified in B.C.C. Article 32, Title 4, thereof, the Owner/Developer seeks approval of a redlined Development Plan (the “Plan”) prepared by McKee & Associates, Inc., for the proposed development of eight single family dwellings (the “subject property”). The proposed subdivision is more particularly described on the Plan submitted into evidence and marked as Developer’s Exhibit 1.

As to the history of this project through the development review process, a concept plan was prepared and a Concept Plan Conference (CPC) held on September 14, 2010. The concept plan is a schematic representation of the proposed subdivision and is 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 October 13, 2010 at the Pearlstone Conference & Retreat Center located at 5425 Mt. Gilhead Road in Reisterstown. Subsequently, a Development Plan is prepared in accordance with B.C.C. Section 32-4-221 and submitted for further review and approval. A Development Plan Conference (DPC) is held between the Developer’s consultants and various

Baltimore County agencies with responsibility over certain aspects of the development proposal. In this case, the DPC was held on March 9, 2011. At the DPC, the Baltimore County agencies responsible for the review of the Development Plan submit written comments regarding the compliance of the Development Plan with the various Baltimore County regulations governing land development in the County. Thereafter, the Developer may revise the Development Plan in accordance with the DPC comments. In this case the Hearing Officer's Hearing was held before me on March 31, 2011.

Appearing at the public hearing on behalf of the Developer were James Grammer of McKee & Associates, Inc., the professional engineer who prepared the Development Plan, and Ruth Elseroad, S. Glenn Elseroad and Glenn Elseroad, on behalf of the Applicant. George Newback and R.H. Slaterback, nearby residents, attended and supported the Plan. Howard L. Alderman, Jr., Esquire, entered his appearance as counsel for the Developer. George Harman, a Reisterstown resident, attended the hearing and voiced concerns regarding certain safety issues.

Representatives of the various Baltimore County agencies who reviewed the plan attended the hearing, including the following individuals with the Department of Permits, Approvals and Inspections (PAI): Darrell Putty, Project Manager; Aaron Tsui, representative of the Office of Zoning Review; Dennis A. Kennedy, Development Plans Review; and Gigi Hampshire, Land Acquisition. Also appearing on behalf of the County were Jenifer Nugent, Office of Planning; Dave Lykens, Department of Environmental Protection and Sustainability (DEPS), and Bruce Gill, Department of Recreation and Parks (R&P)/Development Plans Review (DPR).

Testimony and evidence received revealed the "subject property" is located on the north side of Glen Falls Road at the northeast corner of Woodens Lane. The property is 47.09 acres, more or less, in size and is split-zoned RC 2 (5.803 acres), RC 4 (41.037) acres and RC 8 (0.25 acre). The proposed dwelling units will be developed within the RC 4 zoned portion of the property only.

Section 32-4-228 of the Baltimore County Code (B.C.C.) sets forth the standards the Hearing Officer must follow when considering a development plan. At the public hearing, the Hearing Officer is required to determine what, if any, open issues or agency comments remain unresolved. Testimony and evidence revealed that all issues raised by the various County reviewing agencies had been resolved and incorporated within the redlined Development Plan and that the Plan complies with all County regulations. James Grammer, an engineer with the firm of McKee & Associates, Inc., presented testimony concerning the Plan. Mr. Grammer was accepted as an expert in land use and Baltimore County zoning and development regulations, and he opined that the Plan complied with all County zoning and development regulations.

In addition to recommending approval of the Plan, the Office of Planning presented a revised School Impact Analysis for the proposed development, and this was received and marked as County Exhibit 2. The analysis revealed that the development would not overcrowd or overburden the surrounding school districts, and that the project was in compliance with the Adequate Public Facilities Ordinance.

Given that only 8 lots are proposed, the required open space under Baltimore County regulations would be 8,000 square feet. Mr. Gill indicated the County prefers to acquire at least 20,000 square feet of contiguous open space, so as to provide a meaningful recreation amenity. As such, the Department of Recreation and Parks approved a fee-in-lieu payment to Baltimore County in the amount of \$21,962.40. The Department of Recreation and Parks' letter regarding the local open space fee-in-lieu agreement was admitted as Baltimore County Exhibit 1.

The Baltimore County Code is clear regarding the standards that must be applied when the Hearing Officer/Administrative Law Judge considers a development plan. The Hearing Officer/Administrative Law Judge must approve a plan that satisfies the rules, regulations and policies adopted by Baltimore County regarding development. By its use of the word "shall," the

County Code mandates approval of a development plan in such circumstances, and the Administrative Law Judge does not have discretion to do otherwise. B.C.C. §32-4-229(b)(1). Even so, the Plan in this matter has much to commend it and would be approved by the undersigned even if the County Code did not contain such mandatory language. The entire tract is approximately 47 acres, and the Developer is in essence deeding to the County (or in the case of the conservancy area, a non-profit entity) over 37 acres of land preserving, in perpetuity, environmental features and contiguous agriculturally-rich parcels. See Developer's Exhibit 1. The "building envelope," so to speak, will be just over 10 acres (See "RC 4 Rural Cluster Info." at #7, Developer's Exhibit 1) of the 47 acre tract.

The Elseroads are long-time residents and farmers who are widely recognized as being responsible stewards of the land. The Developer submitted, as Exhibit 2, an aerial photo showing over 300 acres of farmland – adjoining the subject property – owned by the Elseroads (who are principals of the development entity) on which are conducted active farming operations. Simply put, the developers/owners are visible and active in the community, and will remain so for many years.

The Developer presented numerous letters of individuals and community group support, and these were admitted and marked as Exhibits 5-10. Many of these attest to the upstanding nature of the Elseroad family, and applaud the site design where the 8 lots will be clustered at the periphery of the 47 acre lot, leaving the interior and northern sections as open space and preserved agricultural lands. The one discordant note sounded in the proceeding concerned traffic safety along Glen Falls Road. The nearby Midsummer Hill community, which supported the project, alluded to such concerns in a letter dated November 15, 2010, admitted as Developer's Exhibit 3. As shown in that letter, the Developer worked with the community and in fact relocated access points to the development, which "will enhance and improve the safety along Glen Falls Road." In addition,

Stephen Weber, Chief of the Baltimore County Bureau of Traffic Engineering, opined that Glen Falls Road has a “relatively safe accident history,” and that there was “clearly nothing to indicate that the roadway experiences any unusual level of accident activity.” See Developer’s Exhibit 4.

Based upon the testimony and evidence presented, I find that the redlined Plan as submitted at the hearing and accepted as Developer’s Exhibit 1 meets all County rules, regulations and standards for development in Baltimore County and, therefore, must be approved.

Pursuant to the zoning and development regulations of Baltimore County and Article 32, Section 4 of the B.C.C., the Development Plan (Developer’s Exhibit 1) shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Hearing Officer/Administrative Law Judge this 5th day of April, 2011, that the redlined Development Plan for **Autumn Ridge** identified herein as Developer’s Exhibit 1, be and is hereby APPROVED.

Any appeal of this Order shall be taken in accordance with Baltimore County Code, Section 32-4-281.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/pz