

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE
S side of Cockeys Mill Road and		
E of Ivy Mill Road	*	OF ADMINISTRATIVE
4 th Councilmanic District		
4 th Election District	*	HEARINGS FOR
(Borghese Property)		
	*	BALTIMORE COUNTY
Susanna Keyser Borghese		
<i>Applicant/Developer</i>	*	HOH Case No. 04-721

* * * * *

HEARING OFFICER’S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before the Office of Administrative Hearings 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 Article 32, Title 4, of the B.C.C., the Applicant/Developer seeks approval of a Development Plan prepared by D.S. Thaler & Associates, Inc., for a 19 lot residential subdivision on 114.07± acres, more or less, zoned RC 4, owned by Susanna Keyser Borghese. The proposed subdivision is more particularly described on the redlined Development Plan submitted into evidence and marked as Developer’s Exhibits 1A and 1B.

As to the history of this project through the development review process, a concept Plan was prepared and a Concept Plan Conference (CPC) was held on November 3, 2009 in the County Office Building. The concept plan is a schematic representation of the proposed subdivision and is reviewed at the conference by the various Baltimore County agencies charged with responsibility over certain aspects of the development proposal. Thereafter, as is also required in the Development Review Process, a Community Input Meeting (CIM) is posted and 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 December 9, 2009, at the Reisterstown Public Library, where representatives of the Developer and County attended, as well as interested persons residing in the community. Subsequently, a Development Plan was prepared in accordance with B.C.C. Section 32-4-221, *et seq.* based upon the comments received at the CPC and CIM; and submitted for further review and approval, at a Development Plan Conference (DPC) was held on January 5, 2011.

It should be noted at this juncture 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. As with the CPC, at the DPC, the agencies submit written comments regarding the subject Development Plan and make determinations where necessary as to whether the Plan complies with applicable Federal, State and/or County laws and regulations governing land development in Baltimore County. Thereafter, the Developer may revise the Development Plan to address the DPC comments.

The Plan is then presented at a Hearing Officer's Hearing before the Administrative Law Judge sitting as Hearing Officer. In this case, the hearing was held on July 14, 2011, having been previously scheduled and continued from January 27, 2011.

Appearing at the Hearing Officer's Hearing on behalf of Developer were Patricia A. Malone, Esquire, of Venable LLP, who entered her appearance as counsel for the Developer; David S. Thaler, Professional Engineer, and Stacey A. McArthur, Registered Landscape Architect, both with D.S. Thaler & Associates, Inc.; and Robert W. Sheesley, an

environmental consultant with Eco Sense, Inc. Stanard Klinefelter with Brown Advisory represented the Borghese family. Also present were several members of the surrounding community. Those individuals signed in on the Citizen's Sign-In Sheet, contained in the Hearing Officer's file.

B.C.C. Section 32-4-228 sets forth the standards the Hearing Officer must follow when reviewing a development plan. As outlined in B.C.C. Section 32-4-229, the Hearing Officer must approve plans that comply with the development regulations and applicable policies, rules, and regulations. At the public hearing on the Plan, the Hearing Officer must determine what, if any, open issues or agency comments remaining unresolved. Testimony and evidence is then taken on those unresolved issues.

As shown on the redlined Development Plan, the tract consists of two parcels totaling 114.07± acres, zoned RC 4 (Resource Conservation). The property is located northwest of the Liberty Reservoir, along the south side of Cockeyes Mill Road, between Ivy Mill Road and Gores Mill Road. Darryl Putty, Project Manager with the Department of Permits, Approvals and Inspections (PIA), noted his Department's approval of the Development Plan; Jun Fernando, representative of the Office of Zoning Review, signified his Department's approval based on the fact that 22 lots were allowed in the RC 4, but only 19 were being used in the proposed Plan; and Brad Knatz, representing Real Estate Compliance, offered no objection, but did suggest a relabeling item on the Plan which was accepted by the Developer. Bruce Gill, Bureau of Plans Review, spoke on behalf of the Department of Recreation and Parks and confirmed that a waiver from the provision of local open space had

been requested and, given the environmental constraints of the site, was granted for this project.

Jenifer Nugent, representative of the Office of Planning, appeared and recommended approval of the Plan. Ms. Nugent confirmed that her office had reviewed and approved the required School Impact Analysis and the Scenic Route Study for Cockeyes Mill Road. Also, as required by Section 1A03.5 of the Baltimore County Zoning Regulations (B.C.Z.R.), she confirmed her Director's determination that the Plan was compliant with the cluster development performance standards. Don Muddiman, Baltimore County Fire Marshall's Office, and Steven Foster, State Highway Administration, submitted correspondence prior to the hearing.

In this case, the reviewing agencies indicated that all issues had been resolved, and the redlined Development Plan incorporated all required changes, with only two agencies being the exception. As Jeffrey Livingston, Department of Environmental Protection and Sustainability (DEPS) explained, he was called in to the hearing at the last minute due to an absence in his department, and he was not aware of the status of his agency's review of the Plan. DEPS is made up of several reviewing groups, including Storm Water Management, Ground Water Management, and Environmental Impact Review. Also, for this project, Section 1A03.5 of the Baltimore County Zoning Regulations (B.C.Z.R.) requires that the Director of DEPS determine that the proposed conservancy area meets the relevant performance standards. Given his late entry into this matter, I determined to keep the record open so that Mr. Livingston could consult with the various DEPS employees involved and report his Agency's conclusions regarding the efficacy of the Development Plan. If all DEPS

issues were, indeed, resolved, the hearing participants would be so informed, and a decision would be rendered without further proceedings. If any issue remained unresolved, I would reconvene the hearing to address that issue.¹

Next, Dennis Kennedy appeared as the representative of PAI's Bureau of Plans and stated that he conducts plan review for the Department of Public Works (DPW)). Mr. Kennedy testified that he could not confirm that his agency had, in fact, received the 100-year flood plain study requested in the DPC comments. He agreed that this issue could be appropriately be addressed through the simple addition of a note on the Plan, which was added and approved by him at the hearing.

Then, Mr. Kennedy discussed the requested waiver, pursuant to B.C.C. Section 32-4-107(a), from the Baltimore County Public Works Standards for improvements to Gores Mill Road. In particular, the Developer requested a waiver from any requirement to make off site improvements to Gores Mill Road or to acquire off site rights of way for such improvements; and a waiver from any requirement to widen Gores Mill Road or make other improvements to Gores Mill Road except for the proposed widening within sight distance viewsheds. On behalf of the Director of PAI and DPW, Mr. Kennedy relayed both Directors' recommendations for approval of the waiver. Mr. Kennedy was then questioned by several

¹ Following the hearing, on July 27, 2011, I received notice from DEPS that the Department had completed its review and recommended approval of the redlined Development Plan submitted at the hearing on July 14, 2011. In particular, I received copies of two written comments from DEPS, which evidence its recommendation: one from the Environment Impact Review section approving the Plan, and one from Director Vincent Gardina providing written confirmation of the Plan's compliance with the performance standards for rural cluster development. These comments have been marked as Developer's Exhibits 10 and 11, respectively. With the receipt of their comments and with no other additional information having been submitted, I considered the record to be closed

community members about the reasoning behind the recommendations. Edward Underriner, an area resident, took the lead on this questioning.

Mr. Kennedy explained that, in its initial review of the Plan, his agency had requested improvements to Gores Mill Road, including widening the entire length of the road out to Cockeys Mill Road, even if those improvements required the acquisition of off site rights of way. After several meetings with Developer's engineers on the impacts of the requested road improvements and consideration of recently adopted policies governing "Rural Roads" contained in the Department of Public Works Baltimore County Design Manual and the County's *Master Plan 2010* (and carried over into the *Master Plan 2020*), the Directors decided not to require such improvements and to support a waiver instead. As outlined in B.C.C. Section 32-4-107(a), with such recommendations having been made, the decision on whether or not to grant the waiver lies with the Hearing Officer.

After each of the agencies commented, the Developer then presented Stacey McArthur, Registered Landscape Architect with D.S. Thaler & Associates, Inc., to testify regarding preparation of the Plan and compliance of the Plan with the applicable code requirements. After demonstrating her experience with the Baltimore County development process and her familiarity with the applicable Baltimore County Zoning Regulations, Ms. McArthur was accepted as an expert witness. She confirmed that she was responsible for the preparation of the redlined Development Plan in the present case; and, in order to place the property into the context of the surrounding area, referred to an aerial exhibit. (Developer's Exhibit 3). She confirmed the zoning of the property as being RC 4 (Resource Conservation

– Watershed Protection) and explained the applicable requirements for residential development under that zone.

The witness testified that for this site, the RC 4 zone would permit a maximum of 22 dwelling lots (minimum of one acre per lot) and requires that 70% of the tract acreage (79.85± acres) be designated as a conservancy area. She then described the proposed development as being 19 residential lots, each approximately 1-2 acres in size, clustered in three areas on the site. More than 84± acres will be placed into conservancy, which will be located on a conservancy lot shown as Lot 10. Lot 10 also contains one residential unit, Norris Run and the resulting forest buffers, the forest conservation easement area, and the easement for the Baltimore County Recreational Greenway.

Lots 1-9 take access from Cockeyes Mill Road at two different locations. As Ms. McArthur explained, her design provides increased visual buffers along scenic Cockeyes Mill Road, and the Office of Planning has approved this design as meeting the applicable development guidelines for scenic routes. Lots 10-19 access Gores Mill Road, a typical narrow, rural road, owned and maintained by Baltimore County, which is the subject of a request for a waiver from Baltimore County Public Works Standards.

Ms. McArthur described her efforts in working with the various County agencies from the concept plan stage through the preparation of the redlined Development Plan, including the changes made in response to County comments. Finally, she opined that the proposed Plan meets all development regulations and applicable County policies, rules, and regulations.

Developer next called David Thaler, Professional Engineer and President of D.S. Thaler & Associates, Inc., who was accepted as an expert witness based on his background, education, and 36 years of experience in the field of land development. He offered his expert opinion that the redlined Development Plan meets all applicable Baltimore County requirements. Mr. Thaler then testified in support of the waiver request for Gores Mill Road and provided evidence on the required findings under B.C.C. Section 32-4-107(a).

As he explained, the Bureau of the Plans Review had requested that the Developer widen Gores Mill Road along its entire length west from the new public street proposed to serve Lots 10-19 to Cockeyes Mill Road. His office investigated the work that would be involved in making these improvements, and found that because the County did not have sufficient right-of-way along the full length of Gores Mill Road, the Developer would have to acquire off site rights of way. Additionally, the witness observed that the stretch of Gores Mill Road from the proposed site access point to Cockeyes Mill Road is environmentally sensitive. Improvements to Gores Mill Road in compliance with Baltimore County standards would involve a substantial amount of work in this area, which would impact Norris Run, wetlands, and priority forest.

Noting that Gores Mill Road is not a heavily traveled road and is mainly used by the few residents who live along that road, the witness explained, utilizing a Road Network Exhibit (Developer's Exhibit 5), his observation that most members of the community have other options for travel without having to use Gores Mill Road. Given the modest increase in the number of trips that will be generated by this development, only ten homes are proposed on Gores Mill Road, he does not believe that the requested improvements are necessary.

Alternatively, Mr. Thaler stated that in his opinion, an argument can be made that a waiver is not even required because the project satisfies the Baltimore County Code requirement that a proposed development “have access to a public street that is...adequate to carry anticipated traffic.” (B.C.C. Section 32-4-405(b)(1)). In his opinion, the road functions properly for the level of existing traffic, and the few trips that will be generated by these ten homes will not impact that level of functionality.

Additionally, Mr. Thaler suggested that the request for widening of Gores Mill Road is inconsistent with the newly adopted Baltimore County Design Manual, Appendix 1 – Rural Roads, (Developer’s Exhibit 7), which specifically states that such road widening is not encouraged:

It is essential that...special care be taken in the design of roads outside the URDL to preserve the rural character of both the roads and the communities. In keeping with this change in the public’s philosophy..., it is no longer the intention of Public Works to widen roads. Emphasis is placed on maintaining roads and retaining their existing character and design.

Rather than impacting such an environmentally sensitive area, located just up-stream of Liberty Reservoir, and, potentially, altering the rural character of Gore Mill Road, he stated that the Developer proposes to widen the Gores Mill Road pavement along the frontage of the site to a width of 18 feet only within the sight distance view sheds along Gores Mill Road. In addition, to address any safety concerns, Developer will provide two “pull-offs” located along the north side of Gores Mill Road, beyond the stream and forested areas as shown on the Plan. As Mr. Thaler explained, these two areas will provide the opportunity for a vehicle to pull off the road and allow other vehicles to pass safely, while, at the same time, maintaining the character of the road.

When questioned by members of the community about the safety of Gores Mill Road in relation to its paving width, Mr. Thaler stated that narrow rural roads are generally safer than wider, more heavily traveled roads because the narrow paving acts as a traffic calming device, causing motorists to drive more slowly. In his opinion, the road improvements shown on the Development Plan are sufficient.

Lastly, the Developer called Robert Sheesley, an environmental consultant with Eco Sense, Inc., to respond to a question raised by some community members about whether the development would have a negative impact on area wells. After being accepted as an expert witness in environmental matters, he testified that, given the size of the property as compared with the relatively few lots to be constructed, there would be no impact on surrounding wells, particularly in light of current standards pertaining to drilling new wells.

Members of the community were then asked for comments and testimony. Mr. Underriner testified regarding his concern about the narrow width of Gores Mill Road and the impact the development might have on wells in the area. Earlier in the hearing, Mr. Underriner had questioned Mr. Thaler and Mr. Sheesley on their respective issues, and both had testified that the development would not have an adverse impact on the surrounding community. No further testimony was taken.

Turning to the waiver of the Public Works Standards for improvements to Gores Mills Road, I find that the requested waiver is fully justified under Section 32-4-107(a) of the Baltimore County Development Regulations. Given that the proposed site is zoned RC 4, a primary concern should be the maintenance, as much as is possible and practicable, of the rural nature and environmentally sensitive “predevelopment” characteristics of the proposed

site and its surrounding environs. Without the waiver, there will clearly be more of a negative environmental impact, both directly and indirectly, on the surrounding area than if the waiver was granted. At the same time, I am persuaded by the testimony that the two proposed “pull offs” will provide sufficient and safer use of Gores Mill Road by the residents of the new development as well as those already living in the surrounding community, while being mindful of the environment as well as assuring the continuation of the existing character of the entire surrounding area.

The Baltimore County Code (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.

Therefore, after due consideration of the testimony and exhibits presented to me as part of the Development Plan proposal, as well as the concurrence of the various County agencies, I find that the Development Plan is in compliance with all applicable policies, rules, and regulations. Therefore, having 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 revised Development Plan.

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 “BORGHESE PROPERTY” Development Plan, accepted into evidence as Developer’s Exhibit 1 shall be approved.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **_12th_** day of August, 2011, that the request for a waiver, pursuant to B.C.C. Section 32-4-107(a), from Public Works Standards for improvements to Gores Mill Road, is hereby GRANTED; and

IT IS FURTHER ORDERED that the redlined Development Plan for Borghese Property identified herein as Developer's Exhibits 1A and 1B be and is hereby GRANTED.

Any appeal of this Order shall be taken in accordance with B.C.C. Section 32-4-281.

Signed _____
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/pz