

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
& PETITION FOR SPECIAL HEARING		
S/Side of Ridge Road, 290' W of c/line of	*	OFFICE OF
Long Ridge Road		
14 th Election District	*	ADMINISTRATIVE HEARINGS
6 th Councilmanic District		
(Shadow Knoll Property)	*	FOR BALTIMORE COUNTY
Amro Development, LLC	*	HOH Case No. 14-482 and
<i>Applicant/Developer</i>		Zoning Case No. 2011-0274-SPH

* * * * *

**HEARING OFFICER’S COMBINED ZONING RELIEF AND
DEVELOPMENT PLAN OPINION & 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 Development Plan (the “Plan”) prepared by Little & Associates, Inc., for 29 single family dwellings and two existing single-family dwellings zoned D.R.3.5 -- (the “subject property”).

The Developer is also requesting certain zoning relief and has filed a Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure on a parcel of land that does not contain a principle structure. 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 June 29, 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 July 28, 2010 at the White Marsh Public Library. 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 April 20, 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 May 12, 2011.

Appearing at the public hearing on behalf of the Developer were G. Dwight Little, Jr., Professional Engineer with Little & Associates, Inc., the consultants who prepared the Development Plan; and Howard L. Alderman, Jr., Esquire who entered his appearance as counsel for the Developer. Also present were Steven Rosen, Aaron Kensinger and Paul Amirault, whose information appears on the Developer/Applicant Sign-In Sheet.

Also appearing were numerous members of the surrounding communities. These individuals are too numerous to mention and specifically identified herein. However, all have signed in on the Citizen's Sign-In Sheet. Reference is made to the sign-in sheets which are contained within the Hearing Officer's file.

Representatives of the various Baltimore County agencies who reviewed the plan attended the hearing, including the following individuals: Colleen Kelly, Project Manager, Aaron Tsui, representative of the Office of Zoning Review; Dennis A. Kennedy, Development Plans Review (DPR); Bruce Gill, Department of Recreation and Parks (R&P)/Development Plans Review (DPR) section; Brad Knatz, Land Acquisition; David Lykens, Department of Environmental Protection and Sustainability (DEPS), and Curtis Murray, Office of Planning (OP).

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 other than the Office of Planning, had been resolved and incorporated within the Development Plan and that the Plan complies with all County regulations. Curtis Murray, on behalf of Planning, noted that the Pattern Book for the proposed Development (Developer's Exhibit 5) was satisfactory and that only one open issue remained. It was their recommendation that a bike path (Developer's Exhibit 6) be constructed between the Shadow Knoll and Perry Ridge Development, beginning between Lots 19 and 20 of Shadow Knoll, traversing Parcel "A" which is to be retained by William and Betty Gohlinghorst, Petitioners in the accompanying Special Hearing request in this matter, and ending at Tucker Drive in the Perry Ridge Two Development. Planning envisioned a 10 foot public access easement, upon which a proposed 8 foot wide macadam path would be constructed. The proposed path would be constructed through the area set aside for drainage, utility, storm water and forest buffer easements.

The Developer offered as an alternative suggestion a similar bike path located on Homeowners' Association (HOA) property along the rear of the Development, and to connect it with an extended bike path on Perry Hall Boulevard to be constructed by the Developer as part of the basis for the granting of a Local Open Space (LOS) waiver for the project. Mr. Murray noted that Planning took exception to this alternate suggestion on the basis that the route proposed by the Developer was not 8 foot wide in its entire length, as it ran between the storm water pond and retaining wall being constructed as part of the Development Plan. Planning does not believe that it will properly interconnect the two communities. The Developer believes that its formulation of the bike path is preferable as it does not interfere or affect in any way the various easements and forest buffer that would be disturbed under Planning's suggested route. Moreover, the Developer questions the appropriateness of requiring construction of a public use easement on private property, rather than one constructed entirely on HOA ground, connecting to a public right-of-way.

Other than this issue, Mr. Murray noted that the Office of Planning was satisfied with the Development Plan; and had no objection to the proposed special hearing request.

This development is subject to Section 32-6-103 of the B.C.C., Adequate Public Facilities. A School Impact Analysis was prepared and dated March 10, 2011 and it should be noted that the Office of Planning favorably recommended the School Impact Analysis for the proposed development. It was received and marked as Developer's Exhibit 4.

Local Open Space (LOS) is required for this development. Both Council Bill 110-99 and the Local Open Space Manual provide for a fee to be paid instead of dedicating the land. The Department of Recreation and Parks approved a fee-in-lieu payment to Baltimore County in the amount of \$151,380. The details of the LOS fee-in-lieu agreement, including payment of monies

as well as the completion of construction of the Perry Hall Trail by the Developer, is included in a letter dated January 20, 2011 from Little & Associates, Inc., on behalf of the Developer to the Department of Permits, Approvals and Inspections (PAI) and the Department of Recreation and Parks (R&P), who have noted their approval thereupon and which was admitted as Developer's Exhibit 3.

At the conclusion of the departmental discussions noted above, the formal testimony was received as to the open "bike path" issue as well as regarding the special hearing request. G. Dwight Little, Jr., President of Little & Associates, Inc. was, after *voire dire* accepted as an expert in planning, land use and development, engineering, and the Baltimore County development and zoning regulations. He related that he had filed the original concept plan for this project, attended the Concept Plan Conference; and as a result of agency comments prepared the redlined plat accompanying the Development Plan, which has been admitted as Developer's Exhibit 1. He presented this plan at the Community Input Meeting and was in all manner and respect responsible for the documentation of the Development Plan. He described the site as rectangular in shape, zoned D.R.3.5 and covering some 9.7 acres. He related that up to 33 units were permitted under the applicable zoning; however, the instant plan calls only for 29. He explained that the wetlands, drainage, utility, storm water and forest conservation easements, as well as the proposed forest buffer serving the project, would be placed on that tract of land to the west side of the proposed development shown as "Parcel A". It is also the location of the existing garage which is the subject of the accompanying special exception request. He noted that the proposed development will be served by public water and sewage. Upon presentation of the "redlined" plat, he pointed out that the changes made therein were primarily providing

additional numbers and explanations to the already existing document; and that none of the changes altered the basic physical structure of the project.

Turning his attention to the ‘bike path’ issue, he reiterated that as part of the LOS waiver the Developer was extending the “northeast trail” along Perry Hall Boulevard to Riddle Drive. Therefore, he opined that the Developer’s alternative route, namely constructing the requested path from development Lots 15 and 16 along the storm water easement and retaining wall was within the spirit and intent of the Master Plan and appropriately connected the Shadow Knoll and Perry Ridge Developments. In addition, he referred to a letter from the property owners, Mr. and Mrs. Gohlinghorst (Developer’s Exhibit 7) in which they objected to the proposed route set out by the Office of Planning; explaining that the proposed route of a public right-of-way on their private property would expose them to inappropriate and potentially open-ended personal liability. The witness agreed and adopted their concerns.

He concluded by offering his opinion that, notwithstanding the special hearing request and the resolution of the bike path issue, the proposed development meets all requirements of the County zoning and development regulations and should be approved.

Finally, he addressed the special hearing request. He pointed out that the Gohlinghorsts will continue to own the property upon which their home remains as well as Parcel “A”, upon which the existing garage stands. They will continue to reside in their home and the garage will still be a subordinate use of that residency. He noted that the garage meets all Code requirements and is still subject to the buffers and easements which will exist on Parcel “A”. Finally, he detailed his conclusion that the proposed special hearing request satisfies and complies with Subsection 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). He concluded that for all those above noted reasons, the special hearing should be granted.

The Baltimore County Code is clear regarding the standards that must be applied when the Hearing Officer considers a development plan. The Hearing Officer must approve a plan that satisfies the rules, regulations and policies adopted by Baltimore County regarding development. Based upon the testimony and evidence presented, I find that the 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. Additionally, I find that the "bike path" can and should be constructed pursuant to the alternative suggested by the Developer; that is from Lots 15 and 16, along the storm water pond and retaining wall, and connect to the bike path extension which will be constructed by the Developer as part of the LOS waiver. I find that the proposal of the Office of Planning inappropriately subjects the Gohlinghorsts to unnecessary liability (which the County will of course not assume on their behalf); while the proposed route offered by the Developer satisfies the spirit of the Master Plan.

As regards the special hearing, I find that the existing garage is truly carrying out an accessory role relative to the continuing residence of the Gohlinghorsts, who own the adjacent lots upon which their principle residence and the garage are located; and in its present form complies with all applicable County regulations, including but not limited to those set forth in Subsection 502.1 of the B.C.Z.R.

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 ___31st_ day of May, 2011, that the redlined Development Plan for the **SHADOW KNOLL PROPERTY** identified herein as Developer's Exhibit 1, be and is hereby APPROVED;

IT IS FURTHER ORDERED that the “bike path” be constructed as proposed by the Developer; and

IT IS FURTHER ORDERED that the Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure on a parcel of land that does not contain a principle structure, be and is hereby GRANTED;

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

LMS:dlw

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