

IN RE: <b>DEVELOPMENT PLAN HEARING</b>	*	BEFORE THE
W/S Parsonage Road, 800' SW of		
Laurel Ridge Drive	*	ZONING COMMISSIONER
<b>(1914 Parsonage Road, LLC Property</b>	*	OF
<i>fka the Ashe Property</i>		
6 <sup>th</sup> Election District		
3 <sup>rd</sup> Council District	*	BALTIMORE COUNTY
Parsonage Road Property, LLC	*	
<i>Legal Owner/Developer</i>		<b>Case No. 06-287</b>

\* \* \* \* \*

**HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER**

This matter comes before the Hearing Officer/Zoning Commissioner for consideration of a development plan prepared by Richardson Engineering, LLC for the proposed development of the subject property with eight (8) single-family homes, all of which will be new construction. The property and proposed subdivision are more particularly described on the four-page, redlined Development Plan submitted into evidence and marked as Developer's Exhibit 1. Although no zoning variances are requested or needed, the Developer seeks approval of a waiver of public works standards to allow for an 18-foot wide paved public road on a 40-foot right-of-way in lieu of the standard 30-foot wide road on a 50-foot wide right-of-way for proposed Ashe Road.<sup>1</sup>

This proposed development has been the subject of extended proceedings in accordance with the Development Review regulations codified in Article 32 of the Baltimore County Code (B.C.C.). This process is initiated by the filing of a concept plan, which is a schematic representation of the proposed development. The first concept plan for this 42-acre site was submitted for review by Karen and Steven Ashe (*the Ashe property*), and a conference by and

---

<sup>1</sup> Encompassed within the waiver of standards request is a desire to allow a reduction of graded shoulder width(s) to 5' in lieu of the required 11' in the area illustrated on the site plan (Exhibit 1) in yellow highlighting. This area is approximately 300 feet in length of the nearly half mile road (from the stream crossing beside the steep slopes). This reduction will decrease the amount of clearing minimizing impacts to wetlands (south side of Ashe Road) and tree removal adjacent to the steep slopes (north side).

among the representatives of the Developer and the County at a Concept Plan Conference (CPC) was conducted on March 13, 2006. 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. The CIM for the Ashe property was held on April 19, 2006 at the Prettyboy Elementary School. In this case, there occurred a delay from further consideration as the property was sold in October, 2008, and the concept plan expired.

A new Concept Plan for the site now known as the *Parsonage Property* was subsequently filed in August, 2009, and a second CPC featuring reconfigured building lots was scheduled and conducted August 17, 2009. A second CIM was convened on September 30, 2009 at the Prettyboy Elementary School. Subsequently, a Development Plan was submitted for review and comment at a conference held again among the Developer and County agency representatives. A Development Plan Conference (DPC) was held on September 8, 2010. Following the DPC, a public hearing on the proposal was conducted before the Zoning Commissioner/Deputy Zoning Commissioner. In this case, the Hearing Officer's Hearing (HOH) was held before the undersigned on September 30, 2010. Testimony and evidence offered by those appearing at the HOH as well as issues raised and arguments advanced were recorded by Paula J. Eliopoulos, Court Reporter with Gore Brothers Reporting Services. Certifications contained within the case file indicate that the property was properly and timely posted with a sign providing public notice of the hearing and that the matter was also advertised properly and timely in the *Jeffersonian* newspaper. I find that proper public notice was provided as required by the B.C.C.

At the HOH the Hearing Officer solicits testimony from the Developer, representatives of reviewing County agencies, neighbors and interested individuals from the community. Issues and concerns are initially identified during the informal phase of the hearing, after which

testimony on those issues is then presented in detail. The Hearing Officer is required to issue a written decision within 15 days of the closing date of the proceedings. I should note that by agreement of all parties, the record of this case was held open, for what ended up being a period of two (2) months, to allow the Department of Environmental Protection and Resource Management (DEPRM) time to review and comment on environmental impacts (EIR) and storm water management (SWM) issues arising from the development proposal and to review correspondence signed by the representatives of several community associations dated October 7, 2010. DEPRM's review has been completed and its comment filed.

Appearing in support of this project was David Lawrence, on behalf of the Owner and Developer, Parsonage Road Property, LLC. The Developer produced as expert witnesses Donald N. Mitten, a Professional Engineer with Richardson Engineering, L.L.C., the consultants who prepared the site plan. In addition, William R. Kopajtic, a Registered Landscape Architect, and Ernest I. Sheppe, III, P.E., a Water Resources Engineer, also appeared and testified as expert witnesses. The Developer/Owner was represented by attorney John B. Gontrum, Esquire.

Numerous representatives of the various Baltimore County agencies tasked with reviewing the plan attended the public hearing, including the following individuals from the Department of Permits and Development Management: Darryl D. Putty (Project Manager); Dennis Kennedy (Bureau of Development Plans Review); Aaron Tsui (Zoning Review Office), and Ronald Goodwin (Bureau of Land Acquisition). Also appearing on behalf of the County were David Lykens (Department of Environmental Protection and Resource Management also cited herein as "DEPRM"), Curtis Murray (Office of Planning), and Jean Tansey (Department of Recreation and Parks). Finally, written development plan comments were received from Steven D. Foster, on behalf of the Maryland State Highway Administration (SHA), and Acting Lt. Don W. Muddiman, on behalf of Baltimore County Fire Marshal's Office. These and other agency

comments are contained within the case file.

The requested approval of the proposed Development Plan was contested. The opponents are residents of the area and community leaders, namely: Kirsten A. Burger, President, Sparks-Glencoe Community Planning Council, Andrew Rathgeber, President, Freeland Community Association, and Sharon Bailey, President, Prettyboy Watershed Preservation Society. They each believe that development of the property would have harmful effects on the environment, especially the quality of water in the Prettyboy Reservoir. In addition, they testified that the proposed development would adversely impact local schools, already overcrowded, as well as be incompatible with the character of the surrounding area.

The subject property under consideration is an irregularly "L" shaped parcel consisting of 42 acres of R.C.4 land located on the west side of Parsonage Road west of I-83 and 600 feet north of the Prettyboy Reservoir property in the Whiteford area of Baltimore County. The property contains steep slopes and wetlands and is mostly wooded. A stream (Frog Hollow) runs through the property (north to south) in close proximity and parallel to Parsonage Road and flows into the Prettyboy Reservoir. The zoning of the property permits development with up to eight (8) dwellings. The property is currently improved with a modest home, barn and outbuildings built in 1926 known as 1914 Parsonage Road. The existing improvements would be razed as part of the redevelopment of the property. The existing well would be removed and the septic reserve area would be abandoned. The improvements are currently accessed by a private road which crosses an adjacent property and then Frog Hollow stream at its confluence with another, unnamed tributary of Prettyboy Reservoir. A new road and stream crossing is proposed, and the existing driveway and 60" culvert would be removed. In addition, management of both storm water quality and quantity would occur on site and easements conveyed to Baltimore County for forest buffer and forest conservation. Pursuant to the R.C.4

zoning regulations over 70% of the property would be placed in a conservancy easement.

### **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 opinions 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 may be imposed.

Pursuant to Sections 32-4-227 and 228 of the Baltimore County Code (B.C.C.), which regulates the conduct at the Hearing Officer’s Hearing, I am first required to identify any unresolved agency comments or issues. The issues and concerns raised at the hearing are addressed as follows:

### **DEVELOPER’S ISSUES**

Mr. Gontrum, on behalf of Parsonage Road Property, LLC, stated that the redlined development plan to his knowledge addressed the County’s issues but for the ownership of Ashe Road and DEPRM’s comments which had not yet been received.

### **COUNTY ISSUES**

With the exception of DEPRM and the Bureau of Plans Review, the County agency representatives who were present corroborated Mr. Gontrum’s comments. These representatives indicated that there were no outstanding unresolved comments and recommended plan approval. I have summarized their responses below:

**Department of Recreation and Parks (R&P):** Jean Tansey on behalf of R&P confirmed her department reviewed Developer's request for a waiver of local open space and approved the payment of a fee in lieu of providing open space. This waiver was granted in accordance with B.C.C. Section 32-6-108(e) as shown by letter, dated August 25, 2010. *See* Baltimore County Exhibit 1.

**Office of Zoning Review:** Aaron Tsui appeared as the representative of the Zoning Review Office and indicated that his office had no outstanding issues with the redlined Development Plan and recommended approval of the Plan.

**Property Management & Land Acquisition:** Ronald Goodwin, on behalf of the Bureau of Land Acquisition, appeared and testified that other than a few minor housekeeping matters, the redlined Development Plan addressed all outstanding issues and his agency recommended approval.

**Department of Environmental Protection and Resource Management (DEPRM):** On behalf of DEPRM, Mr. Lykens confirmed that the complex review portions of the Development Plan that pertained to environmental constraints, floodplains, storm water management and ground water management, are "conceptually" ok but they were still undergoing review. That review was completed favorably to the Development Plan on December 1.

On behalf of the Director Jonas A. Jacobson, Mr. Lykens also submitted a letter, dated September 29, 2010, approving the conservancy area as configured on the Development Plan. Mr. Jacobson concluded that for this site, "that including an area of less than 100 feet within the Conservancy Area...in the southeast corner of the property below the storm water management pond...would best protect the natural resources of the proposed clustered development." *See* Baltimore County Exhibit 2. Even without this area included in the conservancy area, it still exceeded the 70% requirement of the zoning regulations.

**Office of Planning:** Curtis Murray appeared on behalf of the Office of Planning. Mr. Murray indicated that a school impact analysis was prepared by both the Developer and the Office of Planning. The proposed development is projected to send three (3) students to the elementary school, two (2) students to the middle school and two (2) students to the public high school. The analyses revealed that the projected enrollment for Prettyboy Elementary School was in excess of 115% of the State Rated Capacity of the school, while enrollments at the Hereford Middle and Hereford High Schools were below the State Rated Capacity threshold. He stated that to achieve compliance with the provisions for adequate public facilities in Section 32-6-103 of the B.C.C. there had to be allocable capacity in school districts adjoining Prettyboy Elementary School for 38 students. He stated that his office had determined that there was spare capacity in the adjacent Fifth District and Seventh District Elementary schools to allocate to Prettyboy. The Seventh District Elementary school, for example, could accommodate 38 students and remain under 115%. A copy of the School Impact Analysis was marked and accepted into evidence as Baltimore County Exhibits 3A and 3B.

Mr. Murray further testified that his Office had also reviewed the Conservancy Area shown on the plan for compliance with the requirements of B.C.Z.R. Section 1A03.5A and agreed with DEPRM that the Development meets the requirements of that section.

**Bureau of Development Plans Review:** Dennis Kennedy appeared on behalf of the Bureau of Development Plans Review, which reviews plans for the Department of Public Works. Mr. Kennedy stated that his Bureau originally had an issue with the maintenance of Ashe Road but after review agreed that the road should be a public road.

### **WAIVERS**

As indicated above, in addition to development plan approval, Developer requested a waiver pursuant of Public Works standards adopted pursuant to B. C. C. Section 32-4-407 for an

18-foot wide paved public road on a 40-foot right-of-way in lieu of the standard 30-foot wide road on a 50-foot wide right-of-way for proposed Ashe Road and also encompassing a road shoulder width of 5 feet in lieu of the required 11 feet for approximately 300 feet of the half mile length of Ashe Road. The waiver was requested to limit the impact to wetlands for the road crossing of the stream and wetlands and to limit the clearing of trees as the road traversed the slope. The waiver request was supported at the hearing by DEPRM based on reduction of impacts to the natural resources on the site. The Bureau of Development Plans Review and the Department of Public Works were not opposed to the reduction in the width of the paving and of the right-of-way; however, they were opposed to the waiver of the shoulder widths due to safety concerns associated with the maintenance of Ashe Road if the road had inadequate shoulders. I am persuaded, however, by Mr. Mitten's testimony and opinion that safety is not an issue since the location where the waiver is being requested is adjacent to an area of steep slopes on one side and an area containing wetlands on the other side and that the area where the waiver was being requested was along a straight portion of the proposed Ashe Road with moderate grades. Based on the plan presented and the marking shown by Mr. Mitten of the impacted area (Developer's Exhibit 1) it is difficult to perceive how the maintenance would be less safe based on the location of the areas for which the waivers have been sought.

### **PROTESTANTS' ISSUES**

Kirsten A. Burger, President, Sparks-Glencoe Community Planning Council, Andrew Rathgeber, President, Freeland Community Association, and Sharon Bailey, President, Prettyboy Watershed Preservation Society, raised issues regarding the development plan revolving around the propositions that the proposal is too intense, does not preserve the integrity of the site, and will adversely affect the quality of water in the Prettyboy Reservoir. The three (3) associations believe that eight (8) new homes in this "Agricultural Preservation Area" of the



County would be contrary to the legislative intent of the R.C.4 zoning classification which was implemented to protect the water supply from degradation caused by development. On these issues, substantial testimony and exhibits (Community Exhibits 1 through 4) were received into evidence. Quite clearly, members of the associations have spent commendable amounts of time, energy and resources to protect the Prettyboy Watershed Area.

Ms. Bailey presented the Prettyboy Reservoir Watershed Restoration Action Strategy Report (Prettyboy WRAS) with its executive summaries for the reservoir and for Frog Hollow (Community Exhibit 2). This Report was prepared by DEPRM in consultation with the Prettyboy Reservoir WRAS Steering Committee, which consisted of members of various state and local government agencies as well as representatives of the Prettyboy Watershed Alliance, the Gunpowder Valley Conservancy and Trout Unlimited. I have had the opportunity to review the Report at length. Basically, the Report assesses the water quality issues impacting Prettyboy Reservoir Watershed and recommends various action items. It breaks the watershed down into 19 subwatershed areas, of which the Frog Hollow tributary is one. It is important to note that the Report has never been adopted by the County Council as part of a master plan or as part of any regulatory scheme. Instead, according to the Executive Summary of the Report, it “defines eight goals and 35 associated objectives for water quality ... promotion of environmentally sensitive farming and development, and inter-governmental coordination. These goals and objectives have been translated into 88 actions that, when implemented over the next twenty years, will result in achieving the goals ...”

Goal 7 of the Report is to promote environmentally sensitive development. The Report notes the importance of the existing development regulations pertaining to forest buffers along streams, forest conservation, and storm water management. In addition, the Report which was issued in 2008, recommended storm water management measures to protect coldwater

fisheries. Finally, the Report sought to reduce large lot development within the Prettyboy Watershed. See Prettyboy WRAS at 3-4.

Of the 19 subwatershed areas, the Frog Hollow watershed area was ranked last for restoration priority and 11<sup>th</sup> for preservation rank. Put another way, the Frog Hollow watershed was among the healthiest of the subwatershed areas feeding the reservoir. The Report states: “The primary strategy for Frog Hollow is to focus on the protection and restoration of the existing brook trout population through a variety of actions.” Among the actions suggested is the planting of additional trees along the stream.

DEPRM has extensively reviewed the proposed site plan both prior to and subsequent to the hearing. It is keenly aware, as are the residents, of the importance of the watershed not only to the residents of Baltimore County in proximity to it but to the Baltimore region. To suggest otherwise does a disservice to the dedication and hard work of the Department not only in putting together the Report but to furthering the policies of the agency. DEPRM has come to the conclusion after review that the plan should be approved.

After review of the site as it exists today and with the proposed development I concur with DEPRM’s conclusions. With regard to the Prettyboy WRAS I also believe that this development as proposed is the kind of environmentally sensitive development discussed in the report. The site as it exists has virtually no buffers to the Frog Hollow Resource. The septic reserve area for the existing house is in close proximity to the stream. Virtually the entire floodplain area adjoining the stream is without any kind of cover, and the existing culvert is in an environmentally sensitive location. There is no storm water management of any kind on the site, which apparently was farmed in the past. In short, there is nothing buffering any runoff from phosphorous or other chemicals or organic waste from running directly into Frog Hollow.

With respect to the development intensity concerns of the community representatives,

the R.C.4 zone does permit eight (8) dwellings or seven (7) more dwellings than currently exist on the site. Those dwellings come with restrictions. As noted above at least 70% of the property must be placed in a conservancy. More important, the site plan shows forest buffer and forest conservation easement areas that would also be placed on the site, where none now exist. In the R.C.4 zone this kind of development is referred to as a “rural cluster development” and there are performance standards. For example, the maximum area for clearing and grading is 20,000 square feet. This not only includes a house site but also areas which must be cleared for well and septic areas. It also should be noted that the septic areas have to meet current standards, not standards which may have been in place when the existing structure was built or improved upon, assuming that there were any.

Clustering of houses may be contrary to some of the older, larger lot subdivisions that may have occurred in the area. It is, however, consistent with the objectives of watershed protection, and the restrictions on clearing and grading are important to the watershed resource. On a relatively large parcel such as this, the location of eight (8) dwellings along the rear of the property are not an intrusion on either the community or on the immediate neighbors. This development is therefore consistent with the preferred method of development within the zoning classification – it is neither overdevelopment nor incompatible development.

The site plan indicates that there will be plantings of 49 large, deciduous trees and 43 evergreen trees on the site. These will be located in areas not now forested. The expert testimony of William Kopajtic, who worked on the DEPRM submissions, described the forest buffer mitigation and the alternatives analysis that was undertaken on the relocation of the road. DEPRM obviously concurred with the analysis, and the fact that it complies with the county’s strict forest buffer and forest conservation standards as referenced in the Prettyboy WRAS indicates to me that it meets that Report’s goals for development.

Finally, there was expert testimony from Ernest Sheppe with respect to the storm water management proposal. The storm water management to me is an important factor in evaluating the impact of this development. There will be management of storm water quality as well as quantity where none exists today. In addition, the facility has been designed to make sure that the cold water fishery of Frog Hollow will be respected. Again, this is a primary goal of the Report.

The Prettyboy Reservoir Watershed is listed on the Maryland Department of Environment lists as being biologically impaired. Phosphorus is listed as the leading impairment nutrient in the reservoir and should be reduced by 54% in order to meet the necessary water quality standards. A reduction in phosphorous may not occur on this site if it is left to farming in such close proximity to the stream resource without any mitigation or storm water quality management. Despite the concerns of the community representatives, I believe that the proposed development is consistent with county regulations pertaining to water quality and management.

During argument made before me and exhibits received, Protestants asked that I consider reducing the number of lots in this Development, referencing the Hearing Officer's ability to impose conditions on Development Plan approval under B.C.C. Section 32-4-229(d)(2)(iv).

B.C.C. Section 32-4-229(d) provides:

- (2) In approving a Development Plan, the Hearing Officer may impose any conditions if a condition:
  - (i) Protects the surrounding and neighboring properties;
  - (ii) Is based upon a comment that was raised or a condition that was proposed or requested by a participant;
  - (iii) Is necessary to alleviate an adverse impact on the health, safety, or welfare of the community that would be present without the condition; and

- (iv) Does not reduce by more than 20%:
  - 1. The number of dwelling units proposed by a residential Development Plan in a D.R.5.5, D.R.10.5, or D.R.16 zone; or
  - 2. The square footage proposed by a non-residential Development Plan.

The extent of the Hearing Officer's conditional authority under this Section has been raised before, particularly in the Warfield Property (Case No. IV-625), Qureshi Property (Case No. I-523), and Jessop Property (Case No. VIII-842) matters, where I determined that, other than in the D.R.5.5, D.R.10.5, and D.R.16 zones, the County Council has not given the Hearing Officer authority to order a blanket reduction in the amount of residential density allowed for a project. After having considered the issue on appeal, the County Board of Appeals, Circuit Court of Baltimore County and Court of Special Appeals of Maryland have affirmed this interpretation.

As in Warfield, Qureshi, and Jessop, I find that the language of Section 32-4-229(d) is plain and unambiguous and provides the Hearing Officer, as part of his review and approval of residential development plans, the ability to reduce the overall density of a plan in certain higher density residential zones, such as D.R.5.5, D.R.10.5, and D.R.16, and only up to 20% if the Hearing Officer determines that such a condition is necessary to alleviate proven adverse impacts on the health, safety, or welfare of the community and to protect the surrounding and neighboring properties. *See* B.C.C. Section 32-4-229(d). The authority to unilaterally reduce residential density, however, does not exist in the R.C.4 zone.

At any rate, even if I did have the authority to reduce the density of this project, I would not exercise this authority because there is no justification for me to do so in this case. There was no evidence or testimony other than conjecture and speculation that the development of this property, with a density of eight (8) single-family lots would result in an adverse impact on the health, safety, or welfare of the surrounding community. There was no discussion of the positive

impact on any of the environmental resources that would be achieved by the loss of one unit. I also would note that the exhibits clearly showed other housing developments in close proximity to the subject site.

Finally, it should be noted that the R.C.4 zone was enacted “to provide for the protection of the water supplies of metropolitan Baltimore and neighboring jurisdictions by preventing contamination through unsuitable types or levels of development in their watersheds.” B.C.Z.R. Section 1A03.1. This development undeniably complies with the zoning regulations for the R.C.4 zone as well as the other development regulations of Baltimore County. While the effectiveness of these rules is open to debate, these are the rules under which development such as this must be evaluated. Because this development complies with the development regulations, I believe that it should be approved.

### **CONCLUSION**

While I am appreciative of the fact that the community leaders who actually reside in the area are no doubt familiar with the existing conditions on the area's environmental resources, including the impacts to the Prettyboy Reservoir Watershed and the student enrollments in the area schools, I am not persuaded by the conclusions that they draw with regard to the proposed development. As set forth earlier under *Standard of Review*, 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." B.C.C. Section 32-4-229. Therefore, if the County agencies identify no specific deficiency or issue before the Hearing Officer, the development plan is presumed to be in compliance with the Development Regulations, and the burden is then on a Protestant to rebut that presumption. *See generally People 's Counsel for Baltimore County v. Elm Street Development, Inc.*, 172 Md. App. 690 (2007); *Mossburg v. Montgomery County*, 107 Md. App. 1 (1995); *see also* B.C.C. Section 32-

4-227(e)(2).

With the testimony of Messrs. Mitten, Kopajtic and Sheppe, and the concurrence of the different County agencies, the Developer satisfied its burden of proof with regard to approval of the Development Plan and, therefore, is entitled to approval of the plan unless someone was able to point to a specific failure of the development plan to comply with the applicable regulations. As discussed above, while community representatives expressed concerns over the proposed development and its possible negative impacts, they failed to point to specific deficiencies that would prevent plan approval.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Article 32, Title 4 of the Baltimore County Code, the development plan and requested waiver for an 18-foot wide paved public road on a 40-foot right-of-way in lieu of the standard 30-foot wide road on a 50-foot wide right-of-way for proposed Ashe Road and also encompassing a road shoulder width of 5 feet in lieu of the required 11 feet as shown on Developer's Exhibit 1 shall be approved consistent with comments contained herein.

THEREFORE, IT IS ORDERED by this Hearing Officer/Zoning Commissioner for Baltimore County, this 10<sup>th</sup> day of December 2010, that the Development Plan, for the **1914 PARSONAGE ROAD, LLC PROPERTY fka the Ashe Property**, identified herein as Developer's Exhibit 1, with the waivers requested, be and is hereby APPROVED.

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  
Hearing Officer/Zoning Commissioner  
for Baltimore County