

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
AND PETITION FOR VARIANCE		
N Side Monkton Road (MD Rte. 138),	*	HEARING OFFICER
W of Big Falls Road		
(Fishel Property)	*	FOR
7 th Election District	*	BALTIMORE COUNTY
3 rd Council District		
	*	
Dorothy G. Fishel, Edward M. Fishel, II,	*	
Barbara M. Fishel, Susan F. Ramzy,	*	
Margaret A. Melfa		
<i>Legal Owners</i>	*	
Susan F. Ramzy and Margaret A. Melfa	*	Case Nos. VII-420 & 07-352-A
<i>Developers</i>		

* * * * *

HEARING OFFICER’S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before the Hearing Officer/Zoning Commissioner for a combined hearing pursuant to Section 32-4-230 of the Baltimore County Code (B.C.C.). That Section permits an applicant to request development plan approval and zoning relief through a single public hearing. Pursuant to the Development Regulations codified in Article 32, Title 4, thereof, the Developer seeks approval of a development plan prepared by McKee & Associates, Inc., for the proposed development of the subject property into five (5) building lots for single-family dwellings, two (2) of which are existing, on 9.24 +/- acres of land zoned R.C.5. In addition, variance relief is requested from Section 32-4-409(e)(2)&(3) of the Baltimore County Code (B.C.C.) to permit a panhandle driveway length of 1,320 feet in lieu of the maximum permitted length of 1,000 feet. The proposed development and requested relief are more particularly described on the two-paged redlined development plan submitted at the hearing which was accepted and marked as Developers’ Exhibits 1A-2010 and 1B-2010.

The project has an unusual development review process history. As codified in Article

32 of the Baltimore County Code, 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 January 3, 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 to provide residents in the area an opportunity to review and comment on the Plan. A CIM for this project was held on February 15, 2006 in the Hereford High School Cafeteria. Subsequently, a development plan is prepared, based upon the comments received at the CPC and CIM, and submitted for further review at a Development Plan Conference (DPC) which is again held between the Developer's consultants and reviewing County agencies. In this case, the DPC was held on February 28, 2007. Following the DPC, a public hearing on the proposal is conducted before the Zoning Commissioner/Deputy Zoning Commissioner. A Hearing Officer's Hearing (HOH) was first scheduled before me on March 23, 2007; however, as the record of the case will show the hearing was opened and continued without objection in view of the death of Counsel's (J. Carroll Holzer, Esquire) mother. As the sign-in sheets will reflect, there were approximately seven (7) citizens from the local community who appeared as well as Mr. Holzer's representative, Mr. Sterling Leese, informing the Hearing Officer of the need for a continuance. Ms. Carrie Gittings, Treasurer of the North County Preservation Group, addressed the Hearing Officer and indicated a concern with the environmental impacts (surface water flows from the Fishel property westerly and into the Panther Branch stream). Courtney Bishop indicated that storm water management and runoff created by the panhandle driveway and the road widening planned for the north side of Monkton Road would be a problem. Cindy Bachur, who is actually a client of Mr. Holzer's, began indicating her concerns with the additional impervious surface(s)

and increased runoff into nearby streams. These individuals were allowed to speak in the event that they, for some reason, would be unable to attend the next hearing date; however, all were advised via letter dated April 18, 2007 that the hearing would reconvene before me for a Hearing Officer's Hearing on June 15, 2007.

Appearing on behalf of the owners/Developers were Howard L. Alderman, Jr., Esquire, Margaret (Pegg) Melfa, Lawrence A. Melfa, Esquire, Susan F. Ramzy, Virginia and Thomas Hoshall and James D. Grammer, with McKee & Associates, Inc., the engineering consultant and land planner who prepared the development plan. Mr. Grammer was accepted as an expert witness in matters of development and zoning in Baltimore County. In addition to the area residents previously mentioned, Tom Ruhl attended the hearing as an interested party who resides on the south side of Monkton Road opposite the subject property, as well as M. Eisman, T. LeGardeur and Regina Bello. J. Carroll Holzer, Esquire entered his appearance on behalf of his clients, Nicholas and Cindy Bachur.

Numerous representatives of the various Baltimore County agencies tasked with reviewing the Development Plan for compliance with the various requirements and standards attended the hearing, including the following individuals: Jeffrey Perlow, (Zoning Plans Review), Dennis Kennedy, P.E. (Development Plans Review), Gigi Hampshire, (Bureau of Land Acquisition), Walter Smith (Development Management), David Lykens (Department of Environmental Protection and Resource Management – [DEPRM]), Donnell Zeigler (Office of Planning), and Bruce Gill (Department of Recreation & Parks). Written comments were received from Lt. Roland Bosley, Jr., Baltimore County Fire Department, and Steven F. Foster, on behalf of the Maryland State Highway Administration (SHA). These and other agency remarks are contained in the case file.

Pursuant to B.C.C. Sections 32-4-227 and 228, which regulate the conduct of the Hearing Officer's Hearing, I am required, first, to determine what, if any, issues or comments remain unresolved as of the date of the hearing before me. Mr. Alderman, on behalf of Developer, informed me of two items, neither of which could be easily addressed. Satisfactory resolution would involve ongoing negotiations regarding concerns raised by Mr. Holzer's clients (storm water management and driveway extension) and pending a successful solution of the points in question, McKee & Associates would then address the issue of storm water management which needed DEPRM review and approval. By agreement of all parties, the record of this case was held open, for what ended up being a period of approximately 38 months, to allow time for the parties to reach an understanding and to submit additional information about proposed site grading and clarification of drainage patterns for review by DEPRM's Kevin L. Quelet, P.E. In brief, a series of substantial negotiations between the Developer and the Bachurs occurred which resulted in an Agreement being entered into between the parties. A copy of that Agreement entitled *Declaration of Private Ingress, Egress & Utility Easements and Creation of Maintenance Obligations* was submitted as Developer's Exhibit 2-2010 and shall be incorporated herein. A revised plan embodying these modifications was refilled with the Department of Permits and Development Management (DPDM) and a new DPC was held on July 21, 2010 and a Hearing Officer's Hearing (HOH) was then rescheduled, advertised and posted, and occurred on August 12, 2010.¹ As required, this decision now follows.

Appearing at the public hearing required for this project were the parties, their respective counsel, James Grammer, the Developer's consultant who prepared the amended development

¹ Due to the extended time for the review of the storm water management design and the creation of the ingress-egress/maintenance obligation document as well as the realignment of the original panhandle driveway, McKee and Associates mailed the resubmitted development plan with notification of the DPC and Hearing Officer's Hearing to those persons present at both the March 23, 2007 and June 15, 2007 hearings.

plan(s) and the numerous representatives of the various Baltimore County agencies who reviewed the plan.

DEVELOPER'S ISSUES

Mr. Alderman, on behalf of Susan Ramzy and Pegg Melfa, identified no outstanding or unresolved agency issues or comments. Testimony was received from Mr. Grammer, with McKee and Associates, Inc., who described the site and briefly reviewed the redlined plan dated August 9, 2010. As will be discussed below, he indicated that the two (2) significant changes to the plan presented today versus the original submission were the realignment of the proposed driveway and the storm water management design. He certified that the redlined plan met all regulations for development in Baltimore County.

COUNTY ISSUES

The County agency representatives who were present corroborated Mr. Alderman's comments. Each of the representatives indicated that there were no unsettled issues or unresolved comments and recommended plan approval. I have summarized their responses below:

Zoning Review – Bruno Rudaitis appeared as the representative of the Zoning Review Office and indicated that, assuming the requested variance is granted, his office has no outstanding issues with the development plan and recommended approval.

Department of Environmental Protection and Resource Management (DEPRM) – David Lykens stated that the redlined plan addressed all comments from the various sections including Groundwater Management, Environmental Impact Review and Storm Water Management and recommended approval of the plan. As the property is zoned R.C.5, no approval from Agricultural Preservation was required.

Office of Planning – Lloyd Moxley appeared on behalf of the Office of Planning and stated that an updated School Impact Analysis had been submitted as requested and that the analysis indicates that student projections were within the acceptable limits. *See* enrollment calculations submitted and received as Baltimore County Exhibit 1-2010.

Due to the limited number of lots, the rural nature of the development and the distance of the proposed lots from Monkton Road, it was decided that in lieu of the submission of a Pattern Book, the Office of Planning would request a requirement or condition that detailed architectural elevations be submitted for their review and approval prior to the issuance of building permits.

He indicated that the Office of Planning supports the Petitioner's request to permit a variance to the maximum length of a panhandle driveway in the R.C.5 zone.

Department of Public Works – Michael Viscarra appeared on behalf of Dennis Kennedy, as representative of Development Plans Review, and indicated that the redlined plan meets all Public Works requirements and that his department, therefore, was recommending approval of the Plan. In providing further detail, he pointed out that the Director of Public Works recommended the waiver for a panhandle driveway.

Department of Recreation and Parks – Bruce Gill of the Department of Recreation and Parks confirmed his Department reviewed Developers 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(c) as shown by letter, dated February 13, 2007. Mr. Melfa, following his review of the correspondence, requested leave to discuss the aggregate sum of the Director's approved fee amount since two (2) of the present homes have existed for many years – one since 1926 and previously exempted from the local open space requirements. Absent any objection, Mr. Melfa's request was granted. Subsequently, on August 24, 2010 Mr. Gill

informed the undersigned by way of an approval letter signed by Robert J. Barrett, Director, that Lots 1 and 2 were considered grandfathered and that the three (3) new lots would be subject to a fee in lieu in the amount of \$10,290.00. *See* Baltimore County Exhibit 2-2010.

Land Acquisition – Gigi Hampshire indicated that the redlined plan addressed the comments and concerns of the Bureau of Land Acquisition. She also indicated that the private Declaration of Private Ingress, Egress & Drainage Utility Easements and Creation of Maintenance Obligations document be recorded prior to the record plat.

Fire Department – Acting Lieutenant Don W. Muddiman of the Baltimore County Fire Marshal's Office reviewed the plan and stated the panhandle driveway met all his Department's concerns and was capable of handling emergency apparatus weighing 70,000 pounds.

State Highway Administration – Steve Foster of the Maryland State Highway Administration issued a revised Development Plan Conference comment on July 21, 2010 indicating that his agency had no objection to approval.

BACHUR ISSUES

Next, I asked Mr. Holzer whether his clients had any concerns about the project. As indicated earlier, Mr. Holzer, on behalf of Nick and Cindy Bachur, indicated the agreement and revised site plan addressed the storm water impacts to the adjoining properties and provided for a use-in-common driveway on a portion of the development property minimizing impervious areas. In concluding, he asked on behalf of the Bachurs that if the proposed Lot 5 or common driveway, as shown on the redlined plan, would ever be modified that his clients receive written notice of any such contemplated change.

With the community concerns having been articulated, I concluded the informal portion of the hearing. Moving on to the more formal portion, the Developer introduced the redlined

plan through James D. Grammer, an associate and project manager whose firm was responsible for the preparation of the plan. As indicated above, Mr. Grammer provided a description of the property and the proposed development, indicating that the subject property is located on the north side of Monkton Road (Md. Route 138), just west of Big Falls Road in the Hereford area of northern Baltimore County. As noted, the site contains approximately 9.5 acres of land zoned R.C.5. The zoning classification would allow six (6) lots, however, five (5) are being proposed. The five (5) lots will include the two (2) existing homes and three (3) new homes. Each of the lots is approximately 1.6 acres. The two existing lots were created by a minor subdivision in April 1991. The lots will be accessed by an extension of the existing driveway to create a 16-foot wide panhandle. The driveway design has been revised to include portions of the existing Bachur driveway to the east, as well as removal of portions of the Bachur driveway. The result of the realignment is a reduction in the total amount of impervious area from that originally proposed. The storm water management design incorporates various methods to reduce the amount of runoff, control the direction of runoff and reduce the potential effects of erosion on the remaining portions of the Bachur driveway.

In addition, a second sheet (Exhibit 1B-2010) has been added to the Development Plan, permitting several details to be added clarifying the location and extent of the use-in-common driveway easement and the locations of the various easements to be dedicated to Baltimore County. The remaining changes to the redline plans were in response to the agency comments at the DPC.

ZONING RELIEF

Following Mr. Grammer's testimony, the hearing moved to the Petition for Variance filed by the Developer. Specifically, Petitioner requests a Variance from Section 32-4-409(e)(2) of

the Baltimore County Code (B.C.C.) to permit a panhandle driveway length of 1,320 feet in lieu of the maximum permitted length of 1,000 feet.

Section 32-4-409(d)(2) of the B.C.C. pursuant to Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) provides that panhandle driveways serving lots greater than 20,000 square feet may serve five (5) internal lots plus two (2) dwellings on front lots adjacent to the panhandle driveway and the local collector street. In this particular case, all of the lots being served are greater than 20,000 square feet. Lot 1 fronts on Monkton Road. Lots 2, 3, 4 and 5 will be served by the panhandle driveway. Future use by the owners of the “Townsend Parcel” to the west, as indicated on the plan, would constitute the fifth internal lot. The Bachur’s will retain their existing access to Monkton Road; therefore the use is consistent with the requirements of the B.C.C.

Mr. Grammer testified that there was no means to shorten the proposed driveway and serve the proposed number of lots. There will be no increase to the permitted residential density other than that permitted; in fact, the proposed number of lots is less than that permitted by right. Strict compliance with the B.C.Z.R. would result in practical difficulty to the Petitioners in that they would not be able to create the proposed lots permitted as a matter of right. The relief requested is the minimum relief necessary, and the spirit and intent of the B.C.Z.R. will be observed. There will be no adverse impact to the health, safety and welfare of the surrounding community. The grant of variance relief is appropriate.

CONCLUSION

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. With the testimony of

Messrs. Grammer, Moxley and Kennedy and the concurrence of the different County agencies and the State Highway Administration, I find that the redlined development plan is in compliance with those regulations. Therefore, having identified no unresolved or outstanding issues, Developer has satisfied their burden of proof and entitled to approval of the 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, and Baltimore County Zoning Regulations, the amended redlined Fishel Property Development Plan, introduced as Developer's Exhibits 1A-2010 and 1B-2010, shall be approved consistent with the comments contained herein and for the reasons set forth above, the Petition for Variance shall be granted.

THEREFORE, IT IS ORDERED, by this Hearing Officer/Zoning Commissioner for Baltimore County, this 24th day of August 2010, that the redlined development plan for the **FISHEL PROPERTY**, identified as Developers' Exhibits 1A-2010 and 1B-2010, be and are hereby APPROVED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 32-4-409(e)(2) of the Baltimore County Code (B.C.C.) to permit a panhandle driveway length of 1,320 feet in lieu of the maximum permitted length of 1,000 feet is hereby APPROVED, subject to the following conditions:

1. Prior to making any modification to the stormwater or forest conservation easements on Lot No. 5 and/or the common drive as shown on Developer's Exhibits 1A-2010 or 1B-2010, the Developer shall provide written notice of such proposed modifications to: Mr. and Mrs. Nicholas Bachur at 750 Monkton Road, Monkton, MD 21111 and to their attorney, J. Carroll Holzer, Esq. at Holzer & Lee, PA, 508 Fairmount Avenue, Towson, Maryland 21286.

2. Prior to recording of the plat for the Fishel Property, a Declaration of Private Ingress, Egress & Utility Easements and Creation of Maintenance Obligations (Developer's Exhibit 2-2010) shall be recorded among the Land Records of Baltimore County.
3. Prior to the issuance of a new dwelling building permit for any of new lots on the Fishel Property (Lot Nos. 3, 4 and 5), the owner of the lot shall submit plans and elevations to the Baltimore County Office of Planning for review and approval pursuant to Section 1A04.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), RC-5 Residential Performance Standards.

Any appeal of this decision must be taken in accordance with Sections 32-4-281 of the Baltimore County Code and 32-3-401 of the Baltimore County Zoning Regulations.

WJW:dlw

____SIGNED____
WILLIAM J. WISEMAN, III
Zoning Commissioner/Hearing Officer
for Baltimore County