

IN RE: DEVELOPMENT PLAN HEARING (BGE SUBSTATION – HANOVER PIKE) Owner/Developer	* * * * * *	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY HOH Case No. 04-733
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ADMINISTRATIVE LAW JUDGE’S
DEVELOPMENT PLAN OPINION & ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for a public hearing on a development proposal submitted in accordance with the development review and approval process contained in Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). Baltimore Gas and Electric Company (BGE), the developer of the subject property (hereinafter “the Developer”), submitted for approval a redlined Development Plan prepared by FSH Associates, Inc., known as “BGE Substation – Hanover Pike Property.”

The Developer proposes a public utility with ancillary parking situated on multiple parcels (which will be combined upon filing of the record plat) comprising 180 acres total, more or less, of RC 2 zoned property. No water or sewer service is required and the site will have no full-time staff. The site is currently improved with several buildings, which are to be removed. The balance of the property is fields and woods with a riparian feature on the northern edge.

Details of the proposed development are more fully depicted on the four-sheet redlined Development Plan that was marked and accepted into evidence as Developer’s Exhibit 3. The property was posted with the Notice of Hearing Officer’s Hearing on September 7, 2012 for 20

working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing.

Appearing at the requisite Hearing Officer's Hearing in support of the Development Plan on behalf of the Developer and property owner was Eric Jacobson, Zacharia Y. Fisch and Andy Berlett, both with FSH Associates, the consulting firm that prepared the site plan. G. Scott Barhight, Esquire and Jennifer R. Busse, Esquire with Whiteford, Taylor & Preston, L.L.P. appeared and represented the Developer. Also appearing from the community in support were Gary W. Lenz, Robert Slaterbeck, and S. Glenn Elseroad.

Numerous representatives of the various Baltimore County agencies, who reviewed the Development Plan, also attended the hearing, including the following individuals from the Department of Permits and Development Management: Vishnu Desai (Development Plans Review [DPR]), Brad Knatz, Real Estate Compliance, and Leonard Wasilewski (Office of Zoning Review). Also appearing on behalf of the County were David Lykens from the Department of Environmental Protection and Sustainability (DEPS), and Lloyd Moxley from the Department of Planning (DOP). In addition, written comments were received from the Baltimore County Fire Marshal's Office and the Maryland State Highway Administration. These and other agency remarks are contained within the case file.

The role of the reviewing County agencies in the development review and approval process is to perform an independent and thorough review of the Development Plan as it pertains to their specific areas of concern and expertise. The agencies specifically comment on whether the plan complies with all applicable Federal, State, and/or County laws, policies, rules and regulations pertaining to development and related issues. In addition, these agencies carry out this role throughout the entire development plan review and approval process, which includes

providing input to the Hearing Officer either in writing or in person at the hearing. It should also be noted that continued review of the plan is undertaken after the Hearing Officer's Hearing during the Phase II review of the project. This continues until a plat is recorded in the Land Records of Baltimore County and permits are issued for construction.

Pursuant to §§ 32-4-227 and 32-4-228 of the B.C.C., which regulate the conduct of the Hearing Officer's Hearing, I am required first to identify any unresolved comments or issues as of the date of the hearing. At the hearing, each of the Baltimore County agency representatives identified above indicated that the redlined Development Plan (marked as Developer's Exhibit 3) addressed any and all comments submitted by their agency, and they each recommended approval of the plan. Mr. Moxley noted that since this was not a residential development, the B.C.Z.R. § 260 design standards were not applicable, nor were the school impact analysis regulations.

The community members in attendance indicated that they were "strongly supportive" of BGE's proposal. They stated that BGE had worked extensively with the adjoining community associations, and that the process was cordial and professional and resulted in a plan that was supported by all concerned.

As such, the Developer's case was presented by proffer, and the first witness was Eric Jacobson, project manager for BGE. Mr. Jacobson described the project in general terms, and noted that the substation was a critical and necessary component of this region's electricity "grid." He explained the facility would not be staffed by employees, would not have well or septic services, and that the lighting would be activated by motion sensors.

The next (and final) witness was Zacharia Y. Fisch, Professional Engineer, who was accepted as an expert witness. Mr. Fisch noted that the redlined notations on the Plan addressed each of the comments submitted at the Development Plan Conference (DPC) by County

representatives. The witness described in general the proposal, pointing out that there will be a “ring road” around the electrical utility equipment, which will also be fenced. Mr. Fisch also described two (2) additional notes added to the Development Plan. Note 26 pertains to a stormwater diversion necessitated by design requirements for the site, and this issue will be reviewed in greater detail by the Department of Public Works (DPW) as the project proceeds. Also, Note 27 was added to the Plan, referencing a certain restrictive covenant agreement between BGE and various community associations. That restrictive covenant agreement is also prominently described on sheet 1 of the redlined Development Plan, and plan approval is of course subject to the terms of that agreement. In conclusion, Mr. Fisch testified that in his opinion, the plan (Developer’s Exhibit 3) complied with all applicable provisions of the B.C.C. and development regulations.

The Baltimore County Code 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. § 32-4-229. After due consideration of the testimony and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from the various County agencies that the development plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the Redlined 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 BGE Substation – Hanover Pike Property Development Plan shall be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 9th day of October, 2012, that the redlined “**BGE SUBSTATION – HANOVER PIKE PROPERTY**” Development Plan, marked and accepted into evidence as Developer’s Exhibit 3, be and is hereby **APPROVED**.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw