

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
W/S Pot Spring Rd., S of Old Bosley Rd.		
8 th Election District	*	OFFICE OF
3 rd Councilmanic District		
(Dulaney View Pot Spring Road)	*	ADMINISTRATIVE HEARINGS
Constellation Energy, <i>Owner</i>	*	FOR
Goodier-Baker, LLC, <i>Developer</i>		
	*	BALTIMORE COUNTY
	*	HOH CASE NO. 08-883

* * * * *

**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.”). Goodier-Baker, the developer of the subject property (hereinafter “the Developer”), submitted for approval a Redlined Development Plan prepared by Development Design Consultants (DDC), known as “Dulaney View Pot Spring Road.”

The Developer proposes to construct 13 single-family detached residential units on 10.33 acres of land zoned DR 2 (7.39 acres) and RC 6 (2.94 acres). The site is currently undeveloped with existing woodland comprising the entire property.

Details of the proposed development are provided on the redlined Development Plan that was marked and accepted into evidence as Developer’s Exhibit 1. The property was posted with the Notice of Hearing Officer’s Hearing on March 14, 2013 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 Lou Baker & Mike McCann, and Brian K.

Collins and Andrew J. Stine, both with Development Design Consultants, Inc., the consulting firm that prepared the site plan. John B. Gontrum, Esquire and Jennifer R. Busse, Esquire with Whiteford, Taylor & Preston LLP appeared and represented the Developer.

Several citizens from the area also attended the hearing, and their names are reflected on the sign-in sheets.

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: Jan Cook, Project Manager, Dennis A. Kennedy (Development Plans Review [DPR]), Bruce Gill (DPR), Gigi Hampshire, Real Estate Compliance, and Aaron Tsui (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).

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 (with the exception of Mr. Lykens of DEPS, as discussed below) identified above indicated that the redlined Development Plan addressed any and all comments submitted by their agency, and they each recommended approval of the plan. Mr. Moxley noted the pattern book for the development (Developer's Exhibit 1A) satisfied the residential performance standards in Baltimore County Zoning Regulations (B.C.Z.R.) § 260. He also presented a school analysis (Baltimore County Exhibit 2) indicating that the area schools are not overcrowded using state guidelines. Mr. Gill submitted a letter (Baltimore County Exhibit 1) indicating the Developer will pay a "fee in lieu" of \$56,664.40 to satisfy the Local Open Space regulations.

Mr. Lykens, on behalf of DEPS, indicated at the hearing that his staff had not yet completed its review of the plans. As such, the record in the case was left open, to allow for DEPS to complete its review. On April 26, 2013, that agency indicated it reviewed the "environmental information" on the redlined Development Plan, and recommended approval of same.

In the "formal" portion of the case, the Developer presented several witnesses. The first witness was Lou Baker, who is President of Goodier-Baker Homes. Mr. Baker testified that the firm began operations in 2009, and that his prior experience includes 14 years with Pulte Homes. Mr. Baker stressed that the homes proposed in this case are not "cookie cutter," and should have a starting price in the neighborhood of \$600,000.

Brian Collins was the next witness in Developer's case, and he is a licensed landscape architect. Mr. Collins described the prominent features of the property, which includes a 50' grade

change across the 10.3 acre parcel. Mr. Collins indicated that the property is served by public sewer and water, and is inside the Urban Rural Demarcation Line (URDL), but is not inside the Metropolitan District. As such, he explained that Baltimore City (City) would need to approve the provision of public water outside of the District, and he indicated that the Developer's request in that regard is pending with the City. Mr. Collins testified that the panhandle lots proposed in this case satisfy the standards set forth in both the B.C.C. and the Comprehensive Manual of Development Policies (CMDP). He explained that these panhandles result in using less paving and impervious surface and also allow the proposed houses to be located farther away from the environmentally sensitive features on the site.

Mr. Collins explained in some detail the stormwater management facilities that will be included in this project. He testified that a stormwater management pond would not be used. Instead, a bio-retention device, with no fence or standing water, would be used to provide stormwater management for the new development. Mr. Collins also testified that, given the grade change throughout the site, a retaining wall would be used on the northern boundary of the site, and that its height would range from 8' to 2'. In conclusion, Mr. Collins, who was accepted as an expert, opined that Developer's proposal satisfied all requirements set forth in the B.C.C. and development regulations.

The next witness was Mike McCann, who is the President of the development arm of Goodier-Baker Homes. Mr. McCann explained that each house will have a grinder pump to convey wastewater "uphill" to the gravity sewer located in Bosley Road. Mr. McCann explained that the Developer would use a stair step approach, whereby the combined force of the 13 individual pumps will be more than sufficient to carry the sewage uphill to the County's sewer. In a letter dated October 5, 2011, Mr. Dennis Kennedy, Bureau of Development Plans Review,

approved the Developer's use of the grinder pumps for this project, and as is often the case, much of the details and specifics concerning this waste disposal system will be clarified in Phase II of the development process. (See Developer's Exhibit 5).

The final witness in the Developer's case was Andrew J. Stine, a landscape architect who was accepted as an expert witness. Mr. Stine indicated that he was involved in preparing the plans for this development, and he opined that the project satisfied the § 260 Performance Standards set forth in the B.C.Z.R.

Community Concerns

As noted at the outset, several members of the community attended the Development Plan hearing, and expressed concern with the project. The concerns identified by the community included the following:

1. Use of panhandles;
2. "Squeezing" 13 single-family dwellings (SFD) on the site (instead of 8 – 9 SFDs);
3. The location of the DR 2 – RC 6 zoning line;
4. Discrepancies in the lines demarcating the forest conservation and other environmentally sensitive areas, and;
5. Discrepancies concerning identification of specimen trees on site.

With regard to the panhandle access for the lots, and as noted above, this feature allows the Developer to limit the amount of impervious surface on site, and also allows the dwellings to be shifted forward on the site, farther away from the environmentally sensitive areas on the southern portion of the property. The Developer's proposal to construct 13 single-family dwellings on this tract was approved by the Office of Zoning Review and is in compliance with the density calculations for the site. Indeed, and as shown in a table entitled "Site Data" on the redlined

Development Plan, the acreage would support 15 dwellings. While it may be that 8 or 9 dwellings would be preferable to neighboring owners, the Developer is permitted under the law to construct as many dwellings as it chooses, provided the zoning density and development regulations are satisfied.

The issue concerning the proper location of the DR 2 – RC 6 zoning line has generated a great deal of discussion, including several e-mail exchanges between Developer’s counsel and Don Jones, a neighboring owner. These e-mails are included in the case file, and based on my review of these, it appears there may very well be some good faith discrepancy concerning the placement of the line. The preparation of the official zoning maps is a legislative function performed every 4 years in Baltimore County, and the undersigned is without authority to alter or correct in any way the maps as adopted. In addition, even if such authority existed, it would not be pivotal to the resolution of this case, given that the density calculations would in no way differ if the zoning line was positioned at either of the locations as suggested by Messrs. Gontrum and Jones. Should it ultimately be determined that the zoning line is in fact erroneous, it is the County Board of Appeals that is provided authority to make zoning map corrections. *See* B.C.C. § 32-3-231 et. seq.

The final items of concern identified by the community (delineation of forest conservation boundaries and specimen trees) both result from revisions to original field surveys and measurements. As Developer’s counsel explained, engineers conduct initial inspections and site analysis, and prepare conceptual plans based on those observations and measurements. Thereafter, those field generated maps and data are revised using more accurate computer methodologies, which often results in the boundaries changing slightly for any particular environmental feature or area. This is commonplace in the industry, and Baltimore County agencies have reviewed and approved the boundaries as shown on the site constraints map, marked and admitted as

Developer's Exhibit 4.

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 "Dulaney View Pot Spring Road" Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 6th day of May, 2013, that the "**DULANEY VIEW POT SPRING**" Development Plan, marked and accepted into evidence as Developer's Exhibit 1, 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