

7/24/00

IN RE: DEVELOPMENT PLAN HEARING
and PETITION FOR SPECIAL HEARING
(Franklin Station)
N/S Berryman's Lane, 698'
S of Tarragon Road
4th Election District
3rd Councilmanic District

* BEFORE THE
* HEARING OFFICER
* OF BALTIMORE COUNTY
*
* CASE NO. IV-540 & 00-336-SPH
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*

Hampton Reisterstown, LLC
Legal Owner and
Ryland Homes/Contract Purchaser
Developers

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HEARING OFFICER'S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Deputy Zoning Commissioner for Baltimore County on a Motion for Reconsideration filed by the legal owners of the subject property, Hampton Reisterstown, LLC and Ryland Homes, the contract purchaser. The Motion for Reconsideration was filed by G. Scott Barhight, attorney at law, representing the developer. The Motion for Reconsideration asked that I reconsider the issue regarding storm water management and diversion of surface water drainage, which was the basis for the denial of the Development Plan that was submitted before me previously. In addition, the Petitioner has asked that the special hearing request which was previously denied be reconsidered.

By way of background, this matter originally came before this Hearing Officer for a hearing on April 6, 2000. After a public hearing on the issues presented, an Order was issued by this Hearing Officer dated the 18th day of April, 2000, whereupon the issues that were presented at that hearing were resolved. Ultimately, the Development Plan as submitted was denied based on an issue raised by the Department of Public Works involving the manner in which the developer proposed to manage storm water runoff from the subject property. The issue also involved the diversion of surface water drainage, as well as diverting that drainage through outfall pipes situated beneath I-795. After a full hearing on the matter, the Development Plan

Date 7/24/00
By M. P. Gemenon

was denied on that issue. In addition, the special hearing request filed by the Petitioner was also denied, given that the Development Plan was denied.

After the issuance of my original Order, the Petitioner filed a Motion for Reconsideration dated the 25th day of April, 2000. The motion was granted and the matter was set in for another public hearing for the purpose of reconsidering the issue that resulted in the denial of the Development Plan submitted and the special hearing request. The public hearing on the Motion for Reconsideration was held July 21, 2000.

Appearing at the hearing on behalf of the developer were G. Scott Barhight and Jennifer Busse, attorneys at law, representing the Petitioner. David S. Thaler, Ernest Sheppe and Alan Scott appeared on behalf of D. S. Thaler & Associates, the engineering firm who prepared the Development Plan of the property. Doug Eshelman appeared on behalf of Ryland Homes and Carmen Gilmore appeared on behalf of Lowe Enterprises. As is usual and customary, representatives of the various Baltimore County reviewing agencies also attended the hearing, namely, Robert W. Bowling and Jun Fernando, from the Office of Permits & Development Management; Colleen Kelly from the Bureau of Land Acquisition; R. Bruce Seeley from the Department of Environmental Protection & Resource Management (DEPRM); Jeff Long from the Office of Planning; and Jan Cook from the Department of Recreation and Parks. Finally, three residents from the surrounding community who appeared at the previous hearings also attended the hearing, Mr. and Mrs. Drenning and D. T. Breckenridge.

The purpose of the reconsideration request was to entertain testimony and evidence regarding a new design of the subject property relating to storm water management and surface water drainage. The Petitioner now proposes two (2) separate storm water management ponds and does not propose to divert surface drainage. This is quite different from the previous plan submittal which resulted in the Development Plan being denied. Apparently, the developer met with representatives from Public Works, as well as DEPRM prior to the hearing before me. They have put forward a new design that has satisfied both of those agencies. Therefore, at the

time of the hearing before me, relative to the issue which resulted in the denial of the original plan, all agencies were in agreement that the new design satisfied all Baltimore County regulations. Therefore, there was no issue regarding the new design, accordingly the new Development Plan shall be approved.

In addition to reconsidering the issue that caused the Development Plan to be denied originally, the Petitioner also moved forward on their Petition for Special Hearing to approve non-density portions of Lots 2, 20, 21, 23, 24, 26, 27, 31, 34, 35, 52, 53, 55, 70, 71, 72, 73, 74, 75 and 76 and to allow possible future construction of accessory structures in these non-density portions. The special hearing request was generated due to the fact that there are several zone lines bisecting this property at different locations. The subject property is split zoned DR 2 and DR 3.5. However, those zone lines run through the property in various areas, as shown on the site plan submitted. Because of the unusual manner in which the zone lines cross the property, some of the lots contained therein are themselves actually split zoned DR 3.5 and DR 2. Therefore, a small part of the lots previously identified will contain a non-density portion. This, in and of itself, requires special hearing approval. Furthermore, special hearing approval is needed in order for the future owner of a particular lot that is split zoned in that fashion to place accessory structures in that non-density area. This "density anomaly," while not a frequent occurrence, does come up on occasion. The engineer in this case did an excellent job in designing and laying out the lots within this parcel, given the many site constraints that has challenged this design. It is virtually impossible to design the property with lots wherein this anomaly would not have occurred. Therefore, the special hearing relief requested by the Petitioner shall be granted as requested.

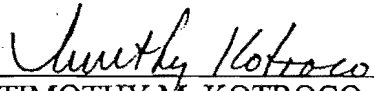
THEREFORE, IT IS ORDERED by this Deputy Zoning Commissioner/Hearing Officer for Baltimore County this 24th day of July, 2000, that the Motion for Reconsideration be GRANTED and the Development Plan submitted into evidence as Developer's Exhibit No. 5, be and is hereby APPROVED.

Date 7/24/00
By J. P. Johnson

IT IS FURTHER ORDERED that all other findings, terms and conditions contained within my previous decision dated the 18th day of April, 2000, be incorporated into this Order.

IT IS FURTHER ORDERED that the Special Hearing relief to approve non-density portions of Lots 2, 20, 21, 23, 24, 26, 27, 31, 34, 35, 52, 53, 55, 70, 71, 72, 73, 74, 75 and 76, and to allow possible future construction of accessory structures in these non-density portions, be and is hereby GRANTED.

IT IS FURTHER ORDERED that any appeal of this or any other prior decision previously made by this Hearing Officer/Deputy Zoning Commissioner must be filed within thirty (30) days from the date of this Order.


TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER/
HEARING OFFICER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING
DATE 7/24/00
BY R. G. [signature]

In re:

DEVELOPMENT PLAN HEARING and
PETITION FOR SPECIAL HEARING

Franklin Station

N/S Berryman's Lane, 698' S of Tarragon Rd.

4th Election District

3rd Councilmanic District

Hampton Reisterstown, LLC

Legal Owner, and

The Ryland Group, Contract Purchaser

Petitioners

BEFORE THE

DEPUTY ZONING

COMMISSIONER

OF BALTIMORE COUNTY

Case No.: IV-540 & 00-336-SPH

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

Petitioners, Douglas F. Eshelman and The Ryland Group, by and through their attorneys, G. Scott Barhight, Jennifer R. Busse, and Whiteford, Taylor & Preston L.L.P., file this Motion for Reconsideration of the Deputy Zoning Commissioner's Hearing Officer's Opinion and Development Plan Order dated April 18, 2000, and respectfully request that the Deputy Zoning Commissioner reconsider his decision to deny approval of this subject development plan, and his decision to deny the petition for special hearing seeking approval for non-density portions of certain lots and to allow possible future construction of accessory structures in these non-density areas.

1. Petitioners respectfully request that they be allowed to file a revised development plan for the proposed development known as Franklin Station with the Baltimore County Department of Public Works and the Baltimore County Department of Environmental Protection and Resource Management ("DEPRM") for the purpose of resolving the issue on which the Deputy Zoning Commissioner denied Franklin Station's development plan.

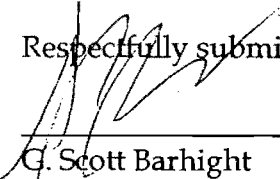
2. Petitioners respectfully request that within 15 days of the date that Petitioners submit a revised development plan for Franklin Station, the Baltimore County Department of Public Works and DEPRM be required to provide a written comment on the revised plan.

3. Petitioners respectfully request they be allowed to appear before Deputy Zoning Commissioner Timothy M. Kotroco within 20 days of the date that Petitioners submit a revised development plan for Franklin Station, for the purposes of obtaining approval of the revised development plan and approval of the relief requested in the petition for special hearing (Case 00-336-SPH).

4. Petitioners respectfully request that they be allowed to notify all those interested persons who appeared at the hearing officer's hearing in this matter on April 6, 2000, in writing, of the date of the Hearing Officer's Hearing and Hearing for Petition for Special Hearing to be held before Deputy Zoning Commissioner Timothy M. Kotroco within 20 days of the date that Petitioners submit the revised development plan. Petitioners request that they not be required advertise or post the date of the Hearing Officer's Hearing and Hearing for Petition for Special Hearing to be held within 20 days of the date that they submit the revised development plan.

WHEREFORE, for the foregoing reasons, the Petitioners respectfully request that the Deputy Zoning Commissioner reconsider his Hearing Officer's Opinion & Development Plan Order dated April 18, 2000, and grant Petitioners the relief requested herein.

Respectfully submitted,



G. Scott Barhight
Jennifer R. Busse
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25TH day of April, 2000, a copy of the Petitioner's

Motion for Reconsideration and Memorandum in Support thereof was mailed first class,

postage prepaid to:

Mr. Alan Scoll
Mr. Ernest Sheppe, III
Mr. David Thaler
D. S. Thaler & Associates
7115 Ambassador Road
P.O. Box 47428
Baltimore, MD 21244

Mr. Doug Eshelman
c/o Ryland Homes
7250 Parkway Drive, Suite 520
Hanover, MD 21076

Mr. Michael Kelly
c/o Wilson T. Ballard Co.
17 Gwynns Mill Ct.
Owings Mills, MD 21117

Mr. Mickey Cornelius
c/o The Traffic Group
9900 Franklin Station Drive, Suite H
Baltimore, MD 21236

Mr. Gregory Drenning
39 Stocksdales Ave.
Reisterstown, MD 21136

Mr. and Mrs. Davis T. Breckenridge
214 Stocksdales Ave.
Reisterstown, MD 21136

Mr. Joe Collins
115 Sunnymeadow Lane
Reisterstown, MD 21136

Mr. Ralph Hodge
33 Stocksedale Ave.
Reisterstown, MD 21136

Mr. Roslynn Goldberg
8609 Keller Ave.
Stevenson, MD 21153

Ms. Virginia Marriott
19 Aldyth Ave.
Reisterstown, MD 21136

Ms. Lucy Hoffman
17 Aldyth Ave.
Reisterstown, MD 21136

Mr. Max McPhail
19 Aldyth Ave.
Reisterstown, MD 21136

Mr. Harvey Zeleski
9 Jessie Ct.
Reisterstown, MD 21136



Jennifer R. Busse

194881

In re:

DEVELOPMENT PLAN HEARING and
PETITION FOR SPECIAL HEARING

Franklin Station
N/S Berryman's Lane, 698' S of Tarragon Rd.
4th Election District
3rd Councilmanic District

Hampton Reisterstown, LLC
Legal Owner, and
The Ryland Group, Contract Purchaser
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BEFORE THE

DEPUTY ZONING

COMMISSIONER

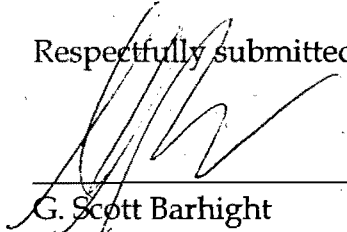
OF BALTIMORE COUNTY

Case No.: IV-540 & 00-336-SPH

PETITIONER'S MOTION FOR RECONSIDERATION

Petitioners, Douglas F. Eshelman and The Ryland Group, by and through their attorneys, G. Scott Barhight, Jennifer R. Busse, and Whiteford, Taylor & Preston L.L.P., file this Motion for Reconsideration of the Deputy Zoning Commissioner's Hearing Officer's Opinion & Development Plan Order dated April 18, 2000, and respectfully request that the Deputy Zoning Commissioner reconsider his decision to deny approval of this subject development plan, and his decision to deny the petition for special hearing seeking approval for non-density portions of certain lots and to allow possible future construction of accessory structures in these non-density areas.

Respectfully submitted,



G. Scott Barhight
Jennifer R. Busse
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210 West Pennsylvania Avenue
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Attorneys for Petitioners

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Hampton Reisterstown, LLC
Legal Owner and
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HEARING OFFICER'S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Deputy Zoning Commissioner for Baltimore County as a requested approval of a Development Plan for a project known as "Franklin Station". In addition to the Development Plan approval request, the Developer is also requesting a special hearing pursuant to Case No. 00-336-SPH.

The Development Plan approval request is Case No. IV-540 and is known as "Franklin Station". The subject property contains a gross area of 32.94 acres, more or less, split-zoned D.R.3.5. and D.R.2. The property is proposed to be developed with 79 single-family residential lots. The subject site is located on the east side of I-795, sandwiched between Stocksdales Avenue to the north and Berryman's Lane to the south. The proposed improvements are more particularly shown on Developer's Exhibit No. 1, the Development Plan of the property. In addition to the requested approval of the development of the site, the Developer is also requesting a Special Hearing to approve non-density portions of Lots 25, 39, 58, 60, 2, 26, 28, 29, 31, 32, 36, 40, 57, 75, 76, 77, 78, 79, 80 and 81, and to allow possible future construction of accessory structures in these non-density areas.

Date 4/18/2000
By J.R. Johnson

Appearing at the hearing on behalf of the Special Hearing and Development Plan approval request were Alan Scoll, Ernest Scheppe and David Thaler, all with D. S. Thaler & Associates, the engineers who prepared the site plan of the property. Doug Eshelman appeared on behalf of Ryland Homes. Michael Kelly, with the Wilson T. Ballard Company and Mickey Cornelius with the Traffic Group also attended the hearing. The Developer was represented by G. Scott Barhight, attorney at law. As is customary, representatives from the various Baltimore County reviewing agencies also attended the hearing, namely, Robert W. Bowling and Jun Fernando, from the Office of Permits & Development Management; R. Bruce Seeley and John Russo from the Department of Environmental Protection & Resource Management (DEPRM); Lynn Lanham from the Office of Planning; and Jan Cook from the Department of Recreation and Parks. Mari-Jan Shaffer, aide to Councilman Bryan McIntire, Third Councilmanic District, also attended the hearing. In addition, a number of citizens from the surrounding community appeared and participated at the hearing. Those citizens signed in on the Citizen Sign-In Sheet.

As to the Development Plan, a Concept Plan Conference was held April 26, 1999, followed by a second Community Input Meeting held at the Glyndon Elementary School Caf  on June 17, 1999. A Development Plan Conference followed on March 8, 2000 and a Hearing Officer's Hearing was held on April 6, 2000 in Room 106 of the County Office Building.

At the preliminary stage of the Hearing Officer's Hearing, I attempt to determine what, if any, agency issues or comments remain unresolved at the time of the hearing before me. Several issues were raised by either the County representatives in attendance or the various citizens who were at the hearing. Those issues will be dealt with in the body of this Order.

Issue 1: Storm Water Management

Mr. Robert Bowling, a representative of Permits and Development Management and Mr. John Maple, a representative of Public Works, raised an issue concerning the diversion of surface drainage from one area of the site to a stormwater management facility located approximately in the center of the parcel. Testimony and evidence offered by these gentlemen evidenced strong

objection to the diversion of the surface drainage for reasons that follow.

Their objection centered around the method by which surface water is conveyed from the property and discharged under I-795. As shown on the Development Plan, situated at the northern end of the site there exists a 30 inch reinforced concrete pipe which passes under I-795 which accepts surface water from the northern end of the parcel to be developed. In the center of the site there exists a 42 inch reinforced concrete pipe, which also drains under I-795. On the southern end of the parcel to be developed there exists a 60 inch reinforced concrete pipe which passes under I-795. The Developer proposes to install one storm water management facility in the center of the site as shown on the site plan of the property. Their plan proposes to capture and convey to this storm water management facility most of the runoff from their property. This includes diverting the natural flow of storm water runoff from the southern portion of the site into this storm water facility. Mr. John Maple, who appeared and testified at the hearing, evidenced his department's strong objection to this storm water management plan. His objection was documented in his letter dated March 8, 2000, a copy of which was sent to Thomas Vidmar, Bureau Chief, Resource Management & Engineering Services and to Al Wirth. Mr. Maple restated those concerns at the hearing before me. He objects to the diversion of the storm water in that each of the aforementioned culverts would be significantly affected concerning the amount of water passing through them. He testified that the 42 inch reinforced concrete pipe would be the outfall of the proposed storm water management pond. His testimony demonstrated that there would be a significant increase in the volume of water which would pass through this 42 inch culvert and such volume would pass at extremely erosive velocities, sometimes approaching 23 ft. per second. His objection was so strong that he has asked the engineer to provide written confirmation that the down stream property owners will hold Baltimore County and the State of Maryland harmless for the damages that would occur from the erosion that would take place on their properties.

In addition to his testimony that the Developer has failed to provide a suitable outfall, Mr. Maple is also concerned, as was Mr. Bowling, that the Developer proposes to utilize the existing embankment along I-795 as the same embankment for the storm water management pond. Concern was raised by both gentlemen that utilizing the existing embankment would only weaken the structure and encourage failure.

Mr. Maple testified that the diversion of storm water runoff to the management pond would lessen the flow of water that currently passes under I-795 through the 60 inch reinforced concrete pipe located on the southern portion of the property. Lessening the flow of discharge through this pipe would encourage and cause sediment to build up within the pipe itself due to the lack of flushing during rain events. He, therefore, believes that diverting the storm water to the 42 inch pipe would do damage to the 60 inch reinforced concrete pipe by virtue of causing it to clog up. Mr. Bowling and Mr. Maple both assert that the Developer should install two separate storm water management facilities on the property so that the amount of discharge currently passing under I-795 through the aforementioned reinforced concrete pipes would be maintained. This would insure no further damage to either drain pipe.

In response to the concerns raised by Messrs. Maple and Bowling, the Developer offered testimony that the storm water management facility as proposed is appropriate. Furthermore, Mr. Thaler, testifying on behalf of the Developer, indicated that the issue of storm water management is one better reviewed by DEPRM and not Mr. Maple and Mr. Bowling's departments. Mr. Thaler indicated that DEPRM had no objection to the facility as shown on the Developer's plan. Mr. Thaler also objected to the idea of installing a second storm water management pond on the site, which in essence would be located within 500 ft. of the proposed pond. Mr. Thaler also indicated that while Mr. Maple's letter was dated March 8, 2000 and was sent to DEPRM, he and his clients were unaware of the letter until one day before the public hearing. In response to Mr. Thaler's comments, Mr. Bowling pointed out that his comment dated March 2, 2000, advised the Developer that the issue involving the diversion of storm water

runoff would have to be approved by the directors of both Public Works and DEPRM. He, therefore, believes that this issue concerning the storm water diversion should not have been a surprise to the Developer.

The issue of storm water management is a critical component of any development plan. Failure to properly provide storm water management facilities on sites to be developed have been the basis in the past for denial of a Development. (See Village Care, Inc., Case No. III-377 and 96-284-SPHX). Commissioner Schmidt, in his decision in the Village Care case, ruled that Section 26-203.D.10 mandates that the Development Plan contain "storm water management areas supported by preliminary hydrology computations, and proposed existing storm drainage systems and verification of suitable outfall". Therefore, this Developer must show that the Development Plan submitted satisfies those requisites. I am not at all satisfied that the Developer has in fact provided a "suitable outfall" for this proposed storm water management facility. In fact, I am persuaded to the contrary. The strong testimony of both Messrs. Bowling and Maple cause me great concern that the 42 inch reinforced concrete pipe is not an appropriate conduit for the discharge from the Developer's storm water management pond.

I am equally concerned over the diversion of the surface drainage from the area of the site that formerly drained in the direction of the 60 inch reinforced concrete pipe. The area just above the 60 inch reinforced concrete pipe contains a significant amount of wetlands and two small streams. Diverting drainage from that wetland area could cause the wetlands to dry up and plant and animal life within the stream systems to expire. DEPRM has in past cases testified as to the importance of maintaining the same flow of water into wetlands and stream areas. This was their position in the Trumps Mill Estates Development Plan, which property drained into the Stemmers Run, through a significant area of wetlands. The neighbors in that case asked that the storm water be diverted to alleviate the saturation of their properties. However, the testimony from DEPRM in that case clearly demonstrated that the storm water should not be diverted from the wetland areas thereby causing them to dry up. However, in this case DEPRM has remained

DATE: 4/15/2000
BY: J. J. [Signature]

silent as to the diversion of this surface drainage. In any event, due to the strong testimony of Messrs. Bowling and Maple, I find that the diversion of the storm water drainage, as proposed by the Developer, should not be approved and the method of conveying that drainage to one single storm water management pond, be and is hereby denied.

Lastly, the Developer has proposed to utilize the existing embankment, along I-795, as the embankment of their storm water management facility. Mr. Maple testified, and his comments of March 8, 2000 indicate, that "utilizing the existing embankment will only weaken the embankment and encourage failure". Based on this concern, I shall disapprove the proposed storm water management facility and deny the Development Plan.

Because of this denial, the Developer will have to re-engineer the proposed development of this site so as to address and alleviate the concerns and objections raised by Mr. Maple and Mr. Bowling. This should entail significant revisions to the Development Plan as submitted. Therefore, given the anticipated material changes to the plan, the Developer shall be required to resubmit his plan to the Development Review Committee for resolution of this issue. The Developer shall also notify the members of the community who attended the hearing and involve them in the process before the Development Review Committee. These citizens should be apprised of the method by which the Developer proposes to manage the storm water drainage from this property and the manner in which the overall Development Plan has been altered.

Even though the Development Plan has been denied based on this storm water management issue, it is necessary to address the remaining issues raised at the hearing, given that an appeal of this decision is anticipated. Therefore, I shall address the other issues raised at the hearing before me.

Issue 2: Passive Open Space

An objection was raised to the Development Plan by Mr. Jan Cook and Ms. Jean Tansey, both representatives of the Department of Recreation and Parks. The testimony from the representatives of Recreation and Parks indicated that the passive open space area consisting of 1

acre of land, located adjacent to I-795, is not appropriately designed and fails to meet the dictates of the Open Space Manual. Testimony indicated that the new Adequate Facilities Legislation has altered the provisions for open space on properties to be developed. Mr. Cook and Ms. Tansey indicated that the open space area set aside by this Developer failed to meet the new manual in that the 20 ft. right-of-way which leads to the passive open space is too long and is located in a remote area of the development which would not promote accessibility to all future lot owners. Ms. Tansey testified that the passive open space should be located elsewhere on the site in an area that is accessible by all residents. In the event the open space would remain as shown on Developer's Exhibit 1, Ms. Tansey requested that an alternative means of accessing the open space be provided. She concluded that the Developer has failed to satisfy the open space requirements contained within their manual.

However, on cross-examination, Mr. Barhight questioned Ms. Tansey as to each and every provision of the Open Space Manual that may have pertained to this project. After thoroughly reviewing the specific language of that manual with Ms. Tansey, I hereby find that the open space, as shown on Developer's Exhibit 1, both active and passive, does in fact meet with the dictates of the Open Space Manual. Ms. Tansey's testimony and that of Mr. Cook was more along the lines of what Recreation and Parks would like to see or would wish to see on this plan. However, it was clear from the testimony elicited on cross-examination that the Developer has in fact satisfied the written requirements of the manual. Therefore, this issue involving open space, as shown on the site plan, was not sufficient to warrant that the plan be denied. The Developer has in fact complied with those requirements.

Issue 3: Retaining Wall Along Stocksdale Avenue

Ms. Lynn Lanham, a representative of the Office of Planning, indicated her department's concern relating to a landscape easement proposed along Stocksdale Avenue in the rear of Lots 43-51. She was also concerned over a proposed retaining wall which the Developer may install along the rear of those lots. Testimony and evidence indicated that there is a steep hill existing

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DATE 4/18/2000
BY R. J. JAMES

along the edge of Stocksdale Avenue, which was apparently caused by excavation that took place on the property by the previous owner. This drop in elevation is extensive. One of the proposals put forth by the Developer involves the installation of a 10 ft. high retaining wall along the rear of Lots 43-51 and possibly further, to account for this tremendous change in elevation. This 10 ft. high retaining wall would, at some points, only allow for a 20 ft. rear yard of the homes to be built on the aforementioned lots. A second alternative proposed by the Developer was to bring back to the property fill dirt which would replace the earth that was previously excavated along Stocksdale Avenue, thereby tapering the land and sloping it in a more natural manner. While the latter alternative may be more difficult to achieve, it would promote a more safer and more aesthetically pleasing development.

The use of a 10 ft. high retaining wall along Stocksdale Avenue would be unsafe and should not be permitted to occur. Not only could it pose a hazard to the residents who may move into this subdivision, including small children, even though it may be properly posted and fenced, but may also pose a danger to the residents who live in the surrounding community. A 10 ft. retaining wall along Stocksdale Avenue would give the appearance of a prison wall to those residents who look out the backs of their windows on the houses on Lots 43-52. This wall would only sit a short distance from the rear of those homes. Large retaining walls give the appearance that a development was "forced" onto a particular parcel of land. They give the appearance that the new development is out of character with the existing topography of the surrounding neighborhood. On paper, such as is represented on a Development Plan, these types of retaining walls may appear appropriate when in actuality, once constructed, they look out of character and out of place.

Therefore, I shall order that no taller than a 4 ft. retaining wall may be installed along the rear of Lots 43-52, along the properties common boundary with Stocksdale Avenue. A 4 ft. retaining wall would fit more appropriately into this residential neighborhood than the previously proposed 10 ft. wall. This would require a mix of installing a retaining wall and filling in that

area of the property which was previously excavated. As an alternative to this 4 ft. retaining wall, the Developer may be permitted to install no retaining wall at all, thereby opting to fill in the entire area which was previously excavated. In any event, I shall require that the landscape easement and retaining wall package be reviewed and approved by the Office of Planning and contain a retaining wall no taller than 4 ft.

As stated previously, several residents of the surrounding community appeared and also raised issues as to the development of the site. Mr. Gregory Drenning raised an issue concerning the steepness of the slope along Stocksdale Avenue. He too was concerned over this drastic change in elevation between Stocksdale Avenue and the houses to be constructed in that area. However, I have addressed and resolved the issue raised by Mr. Drenning, by virtue of the resolution of the issue raised by the Office of Planning. I do not believe it is necessary for the Developer to completely eliminate those lots along Stocksdale Avenue or to relocate them a greater distance from the road itself as was Mr. Drenning's suggestion. Those lots may be situated as shown on Developer's Exhibit 1, but the grading of those lots must be in accordance with this Order.

Issue 4: Lots are too small

Several of the residents attending the hearing who testified, including Mr. Zelefsky and Mr. & Mrs. Drenning, indicated that the lots proposed for this subdivision are too small as compared to the homes of the surrounding community. In actuality, this may be the case. However, the lot sizes as proposed are consistent with the Baltimore County Zoning Regulations and the size of the lots proposed are not sufficient to warrant that the plan be denied.

Issue 5: Specimen Trees

Mr. Drenning testified that the Developer has failed to correctly identify all of the specimen trees that are located on the property. He had in his possession a previous site plan of the property wherein Mr. Thomas Hoff, a professional engineer, identified up to 15 specimen trees on the site. The Developer herein, only identifies 8 specimen trees.

ORDER RECEIVED FOR FILING
Date 4/18/2000
By [Signature]

However, Mr. John Russo, a representative of DEPRM, who is charged with reviewing the forest stand delineation that was submitted to his office, indicated that his office has reviewed and approved the number of specimen trees on the property. He indicated the correct number as 8. The testimony of Mr. Russo was that the Developer correctly identified the specimen trees on the property and further indicated that the large tulip poplars, about which Mr. Drenning was concerned, do not constitute specimen trees. Therefore, this particular issue did not warrant that the Development Plan be denied.

Mr. Drenning was particularly concerned over some trees that are located in the area of the proposed pumping station and some trees located along his property in the area where the Developer proposes the installation of a force main. Mr. Thaler testified that the pumping station and force main can be installed without injuring any of the existing trees about which Mr. Drenning testified. While this particular Development Plan has been denied for the reasons set forth herein, any future development of the site would in fact have to provide for the protection of the trees in the vicinity of the proposed pumping station, as well as those trees along the force main right-of-way.

Issue 6: Buffer Along Lot No. 25

Mr. Ralph Hodge, who owns property to the east of the subject site in the area along Lot 25, was concerned that an appropriate vegetative buffer did not extend along his property line in the area of Lot 25. The Developer at the hearing agreed to submit to the Office of Planning a landscape easement agreement which would demonstrate the landscaping along Stocksdale Avenue, along a certain area bordering I-795 and also along Lot 25 which borders Mr. Hodge's property. The Developer was willing to submit that plan to the Office of Planning for their review and approval. While this particular Development Plan has been denied, any future development of this property would require that a landscape easement agreement being submitted for review and approval by the Office of Planning which would demonstrate that these areas are being appropriately buffered.

Issue 7: Traffic

Several of the residents who attended the hearing objected to the development of the site with 79 single-family homes, evidencing their concern for the additional traffic that would be generated by these additional homeowners. While this is a valid concern raised by these residents, it is not sufficient to deny this Development Plan, based on that issue. The subject property is proposed to be developed well under its permitted density and there were no adverse comments from Baltimore County showing concern over the issue of traffic. Therefore, this particular concern was not sufficient to cause the plan to be denied.

There were no other issues raised at the hearing which warranted the taking of testimony and evidence, and resolution by this Order. As stated previously, the Development Plan submitted as Developer's Exhibit 1 is being denied for the reasons set forth herein.

The Developer is also requesting a Special Hearing pursuant to Case No. 00-336-SPH. The Special Hearing request involves the fact that certain of the lots contained within this subdivision will be split-zoned D.R.2 and D.R.3.5., thereby creating non-density portions of those lots. Inasmuch as I have denied the Development Plan submitted, I too shall deny the Special Hearing request. The denial of the Special Hearing request was not necessarily based on the merits of the testimony and evidence submitted in support of that request. Those types of special hearing requests are typically granted by this Deputy Zoning Commissioner. However, given that the Development Plan has been denied, I believe it appropriate to also deny the Special Hearing request. Any appeal of the Special Hearing will be a *de novo* appeal and, therefore, may be entertained by the Board of Appeals in the event this matter should proceed further.

In the event the Developer chooses to resubmit a new Development Plan in accordance with the dictates of this Order, then, no doubt, the Special Hearing request would most likely be altered, given the redesign of the property and the reconfiguration of the proposed lots. Therefore, approving the Special Hearing request, given that the Development Plan has been

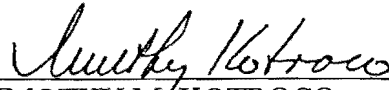
DATE 4/18/2002
BY R. J. [Signature]

denied, would be of little value to the Developer.

THEREFORE, IT IS ORDERED by this Deputy Zoning Commissioner/Hearing Officer for Baltimore County this 18th day of April, 2000, that the Development Plan known as "Franklin Station", submitted into evidence as Developer's Exhibit No. 1, for the reasons set forth in this Order, shall be DENIED.

IT IS FURTHER ORDERED that the Special Hearing request filed pursuant to Case No. 00-336-SPH, be and is hereby DENIED.

IT IS FURTHER ORDERED that any appeal of this decision shall be an appeal of the entire decision, not only those issues resolved against the Developer, such as storm water management, but also all other issues that were resolved in favor of the Developer. Any appeal must be of the entire Order.



TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER/
HEARING OFFICER
FOR BALTIMORE COUNTY

TMK:raj

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at S/S Stocksdale Avenue,
E of I-795
which is presently zoned D.R. 2 & D.R. 3.5

(PDM #4-540)

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

Petition for Special Hearing to approve non-density portions of lots ~~2, 20, 21, 23, 24, 26, 27, 31, 34, 35, 52, 53, 55, 70, 71, 72, 73, 74, 76, and~~ 25, 39, 58, 60, 2, 26, 28, 29, 31, 32, 36, 40, 57, 75, 76, 77, 78, 79, 80 ⁷⁶ and 81, and to allow possible future construction of accessory structures in these non-density portions.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/we do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Ryland Homes Don F. SHELMAN, U.P.

Name - Type or Print 410.712.7012

 Signature

7250 Parkway Drive, Suite 520

Address Telephone No.

Hanover, MD 21076

City State Zip Code

Attorney For Petitioner:

G. Scott Barhight

Name - Type or Print

G. Scott Barhight / jrb

Signature

Whiteford, Taylor & Preston L.L.P.

Company

210 W. Pennsylvania Ave (410) 832-2050

Address

Towson, MD 21204

City

State

Zip Code

Legal Owner(s): Member

A. R. Giudice / HANSEN REGISTRARS LLC

Name - Type or Print 520 / E. Seminary Ave.
Towson, MD 21286 410-632-2071

Signature

See Attached Please

Name - Type or Print

Signature

Representative to be Contacted:

G. Scott Barhight
Name Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Ave. (410) 832-2050
Address Telephone No.
Towson, MD 21204
City State Zip Code

OFFICE USE ONLY - with H&H
LENGTH OF HEARING PDM file
#14-540

UNAVAILABLE FOR HEARING _____

Case No. 00-336-SPH

Reviewed By JJ Date 2-15-00



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

(PDM #4-540)

S/S Stocksdale Ave.,
for the property located at E of I-795
which is presently zoned D.R. 2 & D.R. 3.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

Petition for Special Hearing to approve non-density portions of lots in
~~D.R. 2 and/or D.R. 3.5 zones~~ 2, 20, 21, 23, 24, 26, 27, 31, 34, 35, 52, 53, 55, 70,
25, 39, 58, 60, 2, 26, 28, 29, 31, 32, 36, 40, 57, 75, 76, 77, 78, 79, 80 and 81, and 71, 72, 73,
to allow possible future construction of accessory structures in these non-density 74, 75, and 76
portions.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Ryland Homes

Name - Type or Print

Signature

7250 Parkway Dr., Suite 520 410.712.7012
Address Telephone No.

Hanover, MD 21076
City State Zip Code

Attorney For Petitioner:

G. Scott Barhight

Name - Type or Print

Signature

Whiteford, Taylor & Preston, L.L.P.

Company (410)

210 W. Pennsylvania Avenue 832-2050
Address Telephone No.

Towson, MD 21204
City State Zip Code

Legal Owner(s):

A.R. Giudice/Hampden Reissman LLC
Name - Type or Print

Signature

Berg Brothers Company; Gerald W. Berg; Pres.

Name - Type or Print

Signature

1401 W. Hamberg St. 410-837-5575
Address Telephone No.

Baltimore MD 21230
City State Zip Code

Representative to be Contacted:

G. Scott Barhight

Name Whiteford, Taylor & Preston L.L.P.

210 W. Pennsylvania Ave. (410) 832-2050
Address Telephone No.

Towson, MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 00-336-SPH

Reviewed By uc Date 2/29/00

REV 9/15/98

REVISED 6/29/00 ADDITIONAL LO SIG.

ATTACHMENT TO PETITION FOR SPECIAL HEARING

Petitioner, Ryland Homes, is hereby filing a Petition for Special Hearing for the property located at S/S Stocksdale Ave., E of I-795. Ryland Homes is the Contract Purchaser for this property which is currently owned by two (2) Corporations. The signature of Ray Giudice/Hampton Reisterstown LLC has been obtained by the date of this filing. However, Petitioner intends to obtain the signature of the second owner - The Berg Brothers Company within a matter of days and will then submit three (3) copies of the Petition for Special Hearing with original signatures from the representative of The Berg Brothers Company.

Thank you for your cooperation with this matter.

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