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| IN RE: DEVELOPMENT PLAN HEARING | * | BEFORE THE OFFICE OF |
| 11 th Election District | | |
| 5 th Council District | * | ADMINISTRATIVE HEARINGS |
| (4258 Chapel Road) | | |
| | * | FOR |
| RYE PROPERTY | | |
| | * | BALTIMORE COUNTY |
| | | |
| CHAPEL ESTATES, LLC | * | CASE NO. 11-1168 |
| <i>Owner/Applicant</i> | | |

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**ADMINISTRATIVE LAW JUDGE’S (“ALJ”)
DEVELOPMENT PLAN OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for a public hearing on a development plan submitted in accordance with Article 32, Title 4, of the Baltimore County Code (“BCC”). Chapel Estates, LLC, Owner/Applicant (herein known as “Developer”) submitted for approval a 1-sheet redlined Development Plan (“Redlined Development Plan”) prepared by Merritt Development Consultants, Inc. for property located at 4258 Chapel Rd. known as “The Rye Property” (the “Property”). The Developer proposes to build 6 single family homes situated on 6.07 ± acres. The Property is zoned Density Residential, Honeygo Overlay District (D.R. 1H). Details of the proposed development are more fully depicted on the Redlined Development Plan. (Pet. Ex. 1).

A Community Input Meeting was held on March 27, 2018 at Gunpowder Elementary School. A Development Plan Conference (“DPC”) was held on October 3, 2018. A Hearing Officer’s Hearing (“HOH”) was held on October 26, 2018 (the “1st HOH”). During the 1st HOH, County agencies identified that there were several “open issues” and, as a result, the case was remanded to Permits, Approval and Inspections (“PAI”). A second DPC was held on March 10, 2021. The Property was posted with a 2nd HOH on March 1, 2021 in compliance with the regulations (“2nd HOH”). Due to

the COVID-19 pandemic, a public virtual WebEx hearing in lieu of an in-person public hearing was held on March 26, 2021.

In attendance at the 2nd HOH in support of the Redlined Development Plan were Gary Sperl on behalf of the Developer along with Charles Merritt of Merritt Development Consultants Inc., the firm which prepared the Redlined Site Plan. Timothy Kotroco, Esquire, represented the Developer. Neighboring property owner Meredith Walker, 4262 Chapel Rd. was also in attendance.

AGENCY WITNESSES

Numerous representatives of the various Baltimore County agencies who reviewed the Redlined Development Plan also attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections (“PAI”): Patrick Williams, Project Manager, appeared on behalf of Jerry Chen; James Hermann on behalf of Development Plans Review (“DPR”) and Recreation and Parks (“R&P”); Jason Seidelman from Office of Zoning Review (“OZR”); Brad Knatz from Real Estate Compliance (“REC”); Vishnu Desai of DPR; Steve Ford from the Department of Environmental Protection and Sustainability (“DEPS”) on behalf of Ground Water Management (“GWM”), Storm Water Management (“SWM”) and Environmental Impact Review (“EIR”); and Jenifer Nugent from the Department of Planning (“DOP”). Each County agency representative indicated the Redlined Development Plan addressed all comments and each recommended approval.

Mr. Hermann testified that the Schematic Landscape Plan was approved on March 10, 2021. (County Ex. 1; Dev. Ex. 9). Mr. Hermann added that a Final Landscape Plan would be reviewed during Phase II. Mr. Hermann also testified in regard to the Developer’s Request for an Open Space Waiver requesting to pay a fee-in-lieu in the amount of \$21,060.00. (County Ex. 2; Dev. Ex. 8). Mr. Hermann explained that, pursuant to Adequate Public Facilities Ordinance BCC, §32-6-108, the

amount of open space required for this project is 6,000 sf. (1,000 sf x 6 units) at the rate of \$3.51 sf, or \$21,060.00. Given that there is less than 20,000 sf proposed here and because it is not feasible to meet the open space requirements on-site or off-site, a fee in lieu in the amount of \$21,060.00 was approved on October 25, 2018. (*Id.*).

Jason Seidelman of OZR testified that this was a simple project with six (6) lots created within 6.071 acres. In its initial review, OZR had two (2) issues with regard to location of two (2) dwellings and setbacks. However, those issues were resolved. In regard to the proposed non-transfer of title to the driveway between the homes located at 4262 and 4264 Chapel Rd., Mr. Seidelman indicated that Special Hearing relief is not required.

Brad Knatz of REC testified in regard to the REC Comment prepared for the DPC dated March 9, 2021 and his email dated March 18, 2021. (County Ex. 3). Mr. Knatz indicated that an updated Redlined Development Plan was provided by the Developer on March 25, 2021 (the “Updated Redlined Development Plan”). (Dev. Ex. 11). He confirmed that the minor revisions to the Dedication Table as well as labeling issues, easement boundaries, and acreage changes requested in concert with DEPS Comments were made on the updated Redlined Development Plan. Mr. Knatz also testified that all comments requested by Charles Batchelder of DEPS as reflected on an edited copy of the Redlined Development Plan containing Mr. Batchelder’s notes and requested changes, were addressed. (County Ex. 5).

Vishnu Desai testified on behalf of DPR. Mr. Desai verified that the list of 20 comments provided on an email dated March 18, 2021 from Eugene Cauley of DPR to Jerry Chen had all been completed by virtue of the Updated Redlined Development Plan. (County Ex. 4). Steve Ford reviewed the Updated Redlined Development on behalf of EIR, GWM and SWM and he testified that it met all the comments of EIR and SWM. Mr. Ford added that GMW had no comments given that

the Property is served by public water and sewer. (County Ex. 6).

Jenifer G. Nugent testified that DOP provided initial DPC Comments on October 3, 2018 and that, at that time, the Pattern Book did not address the Residential Performance Standards or the Development Standards for Honeygo Overlay District. Ms. Nugent acknowledged that in the DOP Comment dated 3/10/2021, she requested that the Developer provide an updated School Impact Analysis (“SIA”) and an updated Pattern Book. Ms. Nugent clarified that on March 15, 2021, she reviewed an updated SIA (Dev. Ex. 5) and Pattern Book (Dev. Ex. 7) and that both of these were in compliance. She verified that Perry Hall Middle School has adjacent capacity at Pine Grove Middle School and other adjacent middle schools. (Dev. Ex. 6). Accordingly, DOP recommended approval of the Updated Redlined Development Plan. (County Ex. 7).

DEVELOPER’S CASE

The Developer’s case was presented by way of proffer from Mr. Kotroko. Mr. Kotroko confirmed that the Developer is proposing to build six (6) single family homes on the Property on six (6) separate lots. The Property has an area of environmental features on the eastern end of the Property with a pond and specimen trees. (Dev. Ex. 2A). He confirmed that the Updated Redlined Development Plan was revised and submitted to the County agencies on March 25, 2021. (Dev. Ex. 1, 11).

Mr. Kotroko described the Property using aerial and street view photos. (County Ex. 2, 2A, 3, 3A, 3B, 3C, 4). He explained that the Property had previously been improved with greenhouses which had been used by the Rye family for agricultural purposes. Access to the old greenhouses was via a paved 20 ft. wide driveway from Chapel Rd. between 4262 Chapel Rd. and 4264 Chapel Rd. Mr. Kotroko explained that the Developer is proposing to transfer title to the driveway to the owners of 4264 Chapel Rd. because the new access to the proposed homes will be through a newly

constructed road on the eastern side of 4264 Chapel Rd. (Dev. Ex. 1, 11).

On the western side of 4262 Chapel Rd., there is an access roadway which is not owned by the Developer and reaches properties to the north/rear of the Property. Between that access roadway and the home at 4262 Chapel Road is a 20 ft. +/- strip of land which the Developer is proposing to transfer to 4262 Chapel Rd. as it is no longer needed. The Developer will incur the cost of, and will handle the transfer of, title to all non-density transfers of land.

The Developer is also requesting a Forest Conservation Variance to remove 2 specimen trees located on the southern end of the Property which is at the entrance to where the new access road to the homes will be constructed. (Dev. Ex. 1, 11). There are three (3) specimen trees located on the northern end of the Property which are proposed to remain. (*Id.*). This request to remove two (2) specimen trees was approved by DEPS via letter dated October 17, 2018. (Dev. Ex. 10).

COMMUNITY WITNESSES

Meredith Walker 4262 Chapel Rd. asked questions and testified in regard to the driveway she shares with 4264 Chapel Rd. Ms. Walker testified that she uses the driveway to access her home and garage located behind her home. She expressed concern about transferring title to the driveway to 4264 Chapel Rd. because she needs access to her garage and home from Chapel Rd. Ms. Walker testified that the greenhouses have been removed from the Property. Ms. Walker also inquired as to the financial responsibility for the driveway.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The BCC provides that the “Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations.” BCC § 32-4-229. In *People’s Counsel v. Elm Street Development, Inc.*, 172 Md. App. 690 (2007), the Court of Special Appeals held that if the county agencies recommend approval of a development

plan, it is “then up to [protestants] to provide evidence rebutting the Director’s recommendations.” *Id.* at 703. It should also be noted that in Baltimore County “the development process is indeed an ongoing process, and the hearing officer’s affirmation of the plan is just the first step.” *Monkton Preservation Association, et al. v. Gaylord Brooks Realty Corp.*, 107 Md. App. 573, 585 (1996). Indeed, the County agencies will continue to review the Developer’s evolving plans and construction activities through every phase of the development process to insure compliance with all County laws and regulations.

In the instant case, the testimony of the County agency witnesses and the evidence was unrefuted. After considering the testimony and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from the various County agencies that the Updated Redlined 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 Updated Redlined Development Plan.

In regard to Application for Special Variance, I find that the Developer would suffer an unwarranted hardship if the two (2) specimen trees on the Property line are not removed because they are located where the new entrance will be located. Relocating the Property entrance to the west of 4264 Chapel Rd. is in the best interests of the properties located at 4262 and 4264 Chapel Rd. While the evidence was that the two (2) specimen trees proposed to be removed are in fair to better condition, because there is no other point of access from Chapel Rd. into the Property, the removal of those two (2) trees is necessary. Further, the remaining three (3) specimen trees are located within the environmental areas on the north-eastern end and are protected within the forest buffer and forest conservation area as shown on the Updated Redlined Development Plan. (Dev. Ex. 11). I find that the Developer has met all of the required variance criteria as set forth BCC, §33-3-116(d) and (e).

In regard to the non-density transfer of the driveway between 4262 and 4264 Chapel Rd., the

evidence was clear that this driveway will only serve those two (2) homes. Based on the testimony of Ms. Walker and in review of the Updated Redlined Development Plan, I find that it is in the best interests of 4262 and 4264 Chapel Rd. for each of those properties to own one-half (1/2) of the area of the driveway (approx. 20ft. +/-) and for each to grant easement rights in the driveway to each other. In this way, all maintenance and ingress and egress shall be shared equally between 4262 and 4264 Chapel Rd. In regard to the strip of land between the western access roadway and the home at 4262 Chapel Rd., the Developer will transfer that strip of land (20 ft. +/-) to 4262 Chapel Rd. as it is already part of that side yard.

Pursuant to the advertisement, posting of the property, and the public hearing held thereon, the requirements of which are contained in Article 32, Title 4, of the BCC, "RYE PROPERTY" shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 2nd day of **April, 2021**, that the "RYE PROPERTY" Updated Redlined Development Plan marked and accepted into evidence as Developer's Exhibit 11, be, and it is hereby **APPROVED**; and it is,

FURTHER ORDERED, that the Application for Special Variance to remove two (2) specimen trees as specified on Dev. Ex. 11 and as approved by DEPS (Dev. Ex. 10) be, and it is hereby **APPROVED**; and it is,

FURTHER ORDERED, that the private driveway between 4262 Chapel Rd. and 4264 Chapel Rd. (approx. 20 ft. +/-) shall be divided into equal one-half (1/2) areas by metes and bounds description, and title to each of those equal one-half (1/2) boundary areas shall be transferred, at the cost and expense of the Developer, to the owners of 4262 Chapel Rd. and 4264 Chapel Rd. by fee

simple deed with reciprocal easement rights, to be recorded in Land Records of Baltimore County by the Developer; and it is,

FURTHER ORDERED, that the strip of land (approx. 20 ft. +/-) on the western side of the Property located between the access roadway and 4262 Chapel Rd. shall be transferred, at the cost and expense of the Developer, to the owners of 4262 Chapel Rd., by fee simple deed to be recorded in Land Records of Baltimore County by the Developer.

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

A handwritten signature in black ink that reads "Maureen E. Murphy". The signature is written in a cursive style with a large, looped 'M' and 'M'.

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlw