

IN RE: DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING	*	BEFORE THE OFFICE OF
2 nd Election District	*	ADMINISTRATIVE HEARINGS
4 th Council District	*	FOR
(3002, 3010, 3022 North Rolling Road) & 3711 Clifmar Road)	*	BALTIMORE COUNTY
ROLLING MANOR ESTATES	*	
BVS Holdings, LLC	*	CASE NOS. 02-0701 and
<i>Owner/Applicant</i>	*	2020-0145-A
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**ADMINISTRATIVE LAW JUDGE'S
COMBINED DEVELOPMENT PLAN AND ZONING OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for a public hearing on a development proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code (“BCC”). BVS Holdings, LLC, *Owner/Applicant* (herein known as “Developer”) submitted for approval a 4-sheet redlined Development Plan ("Plan") prepared by Colbert Matz Rosenfelt known as “Rolling Manor Estates”.

The Developer proposes to develop 40 single-family semi-detached dwellings on 7.631+ acres of land zoned DR 5.5. The site is mostly vacant with an existing dwelling and two ancillary structures on site.

The Developer has also filed a Petition for Variance from the Baltimore County Zoning Regulations (“BCZR”) § 504.2 and the Comprehensive Manual of Development Policies (“CMDP”) - Private Yard Areas, pg. 33, to permit a private yard area with a minimum 8 ft. dimension in lieu of the required 15 ft. dimension (Lots 2, 3, 6, 7, 12, 13, 16, 17, 20-26 and 28-32); to permit a private yard area of 475 contiguous sq. ft. in lieu of the required 500 contiguous sq. ft. (Lot 26); to permit no private yard area in lieu of the required 500 contiguous sq. ft. (Lots 8-11, 14 and 15); and, finally, from BCZR § 1B01.2.C.1.B, if necessary, to permit a side building

face to a private road (alley) setback of 9 ft. in lieu of the required 25 ft. (Lots 13, 26 and 40). And, for such other and further relief as may be required by the Administrative Law Judge (“ALJ”) for Baltimore County.

The development and zoning cases were considered at a combined hearing as permitted by BCC § 32-4-230. Details of the proposed development are more fully depicted on the redlined 4-sheet Development Plan that was marked and accepted into evidence as Developer’s Exhibit 1A thru 1C. The property was posted with the Notice of Hearing Officer’s Hearing (“HOH”) and Zoning Notice, both on November 19, 2020, in compliance with the regulations. Due to the COVID-19 pandemic, the undersigned conducted a public virtual WebEx hearing in lieu of an in-person public hearing on December 17, 2020.

The Developer, Howard M. Saperstein, attended the HOH in support of the Plan. Also in attendance was Richard Matz, with Colbert Matz & Rosenfelt, Inc., the firm that prepared the site plan. His *curriculum vitae* was admitted as Developer’s Exhibit 3. David K. Gildea, Esquire and Zachary J. Wilkins, Esquire with Smith, Gildea & Schmidt, represented the Developer. There was only one neighbor who opposed any aspect of the relief sought. As explained below, the Developer has agreed to address her stated concerns, and these modifications of the Development Plan will be incorporated into this Order.

AGENCY WITNESSES

Numerous representatives of the various Baltimore County agencies who reviewed the Plan also attended the virtual hearing, including the following individuals from the Department of Permits, Approvals and Inspections (“PAI”): Patrick Williams, the Project Manager, Jim Hermann of Development Plans Review (“DPR”), and Department of Recreation and Parks (“R&P”), LaChelle Imwiko from Real Estate Compliance, and Roz Johnson, Office of Zoning Review

(“OZR”) also testified. Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (“DEPS”), Vishnu Desai from DPR, and Brett M. Williams from the Department of Planning (“DOP”).

Each County agency representative indicated the Plan addressed all comments submitted by their agency, and they each recommended approval of the Plan. Brett Williams, on behalf of the DOP, submitted the Hearing Officer Hearing Final Report, which was admitted as County Exhibit 1. He confirmed that, per the Final Report, the redlined site plan addresses all DOP comments. He also submitted the approved School Impact Analysis (“SIA”), which was admitted as County Exhibit 2. As stated in the SIA, none of the affected schools will be even near the State Rated Capacity even after this proposed development, and any others in the pipeline are built. Finally, Mr. Williams submitted the approved Pattern Book, which was admitted as County Exhibit 3.

On behalf of DPR, Mr. Herrman testified that a final Schematic Landscape Plan has been approved (Developer’s Exhibit 4). On behalf of Recreation and Parks, Mr. Herrman testified that the proposed 40 residential units require 40,000 sq. ft. of Open Space. He explained that the Developer is providing 11,638 sq. ft. of on-site HOA Open Space, and 70,641 sq. ft. of off-site Open Space that the Developer owns in this councilmanic district. Therefore the developer is providing more than double the required open space. Ms. Johnson testified that OZR does not oppose the zoning variances requested in the zoning petition and that they recommend approval of the final redlined development plan. On behalf of DPR, Vishnu Desai testified that Michael Viscarra reviewed the final redlined development plan and recommends approval. Jeff Livingston testified that DEPS has approved both the groundwater management and stormwater management concept plans. He further testified that Environmental Impact Review (“EIR”) recommends

approval of the redlined development plan, subject to a modification of the forest buffer limit on sheet 3 of the Plan, as described in an Inter-Office memo dated December 16, 2020, which was admitted as Developer's Exhibit 15. Finally, LaChelle Imwiko testified that Real Estate Compliance also recommends approval of the final redlined development plan.

DEVELOPER'S CASE

Mr. Wilkins gave an overview of the development proposal, explaining that 40 semi-detached single family homes are planned on this seven plus acre site, which is zoned DR 5.5. He further explained how the open space is being provided and that two new public roads will be constructed in accordance with the Master Plan, as well as two stormwater management facilities.

The Developer's first witness was Devin Leary, a licensed professional landscape architect. After he testified to his credentials and experience he was accepted as an expert in his field and in the BCZR, the Development Regulations, and the Baltimore County Landscape Manual ("BCLM"). His *curriculum vitae* was admitted as Developer's Exhibit 7. He explained that the site is currently mostly fallow fields and young forest with a small non-tidal wetland in roughly the center of the site which will be protected by forest buffers and forest conservation easements as depicted on the Plan. He further explained that a special Forest Conservation Variance was approved by DEPS so as to allow the removal of 3 specimen trees, two of which are in poor condition and are what are considered "hazard" trees. The Special Variance approval was admitted as Developer's Exhibit 9A. He described the three separate open space areas. Finally, he explained the forest buffer Alternatives Analysis that had been performed and the Plan that was approved by DEPS, subject to six conditions. This Alternatives Analysis and Approval were admitted as Developer's Exhibit 8A-C. Mr. Leary testified that in his expert opinion the Plan meets all federal, state, and county laws and regulations and that the development will have no

adverse environmental impacts. In fact, he testified that the Groundwater Management (“GWM”) and Stormwater Management (“SWM”) facilities and the reforestation will improve existing site conditions.

Professional Engineer, Richard Matz of Colbert Matz & Rosenfelt testified next. Based on his credentials and extensive experience, Mr. Matz was accepted as an expert in land use and development and in the BCZR and the Baltimore County Development Regulations. He testified that this development proposal began back in 2004 and was delayed several times by the County’s sporadic attempts to exercise eminent domain over a portion of the site in order to widen Rolling Road. He explained that the site is made up of three separately deeded parcels. The northernmost parcel has an existing residential structure that will be razed, along with its existing septic system, which will be removed. He explained that the site is within the Urban Rural Demarcation Line (“URDL”) and is served by public water and sewer. Further, there are no basic services map issues associated with the site. He testified that the site has a gross acreage of 7.63 acres and a net acreage of 7.15 acres. He noted that it is designated as a T-4 Urban transect in the 2020 Master Plan, which envisions this type of semi-detached single family housing in this DR 5.5 zone. He testified that the Plan calls for the construction of two new public roads, one of which – Fairbrook Road – is a county Master Plan road, which is planned to ultimately connect Rolling Road with Security Boulevard. Mr. Matz further explained the layout of the houses and parking, including the fact that 104 public parking spaces are required and that 120 are being provided. He also explained the SWM designs, as well as the proposed water and sewer connections. In conclusion, he stated that in his expert opinion the redlined development plan meets or exceeds all provisions of federal, state, and county laws and regulations and that it will not negatively impact the public health, safety, or welfare.

Mr. Matz next explained in detail the basis for each of the requested zoning variances. He first noted that the site is an irregular triangular shape, with wetlands in the center. In addition, as noted above, the proposed Fairbrook Road is a Master Plan road, and Rolling Road is an arterial road, so reverse frontage lots are not permitted. He testified that these features make the site unique in a zoning sense. He then explained how these unique aspects of the site necessitate the requested variances. He explained that private alleys are proposed in order to avoid reverse frontage lots and to allow rear garage access for the lots along the proposed Fairbrook and Rolling Manor Roads. He also explained how various utility easements necessitated variance relief. He testified that these variances would not have a negative aesthetic visual impact because the open space was still largely provided. In sum, he testified that in his expert opinion the variances could be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety or welfare.

COMMUNITY TESTIMONY

Ms. Evangeline Speights testified that she and her husband reside at 2914 N. Rolling Road and that the rear of their two acre property abuts proposed Lots 26 and 27 on the south end of the proposed development. She explained that she and her sister run the Willow Park Academy and Early Learning Center in a building on the premises and she requested that the Developer be required to construct a privacy fence along this boundary. The Developer agreed to do so and this will be a condition of the Order. Ms. Speights testified that she has no other objections to the project.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to BCC § 32-4-229, the “Hearing Officer *shall* grant approval of a development plan that complies with these development regulations and applicable policies, rules and

regulations.” (emphasis added). 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 Developer’s experts was un rebutted. Mr. Leary and Mr. Matz took several hours explaining every aspect of the proposed development and both experts are of the opinion that the redlined Plan satisfies all aspects of federal, state, and county law. 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 Plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and is, therefore, entitled to approval of the Plan.

I further find that the variance relief should be granted under the principles set forth in *Cromwell v. Ward*, 102 Md. App. 691 (1995). First, the property in question is unique, and it is the unique features of the property that necessitate the variance relief. Further, the petitioner would suffer practical difficulty and hardship if the variances were denied because they would not be able to build the development as planned. Finally, I find that the variances can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety, or welfare.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 28th day of **December, 2020**, that the “**ROLLING MANOR ESTATES**” Plan marked and accepted into evidence as Developer’s Exhibit 1A-1C, be and hereby is **APPROVED**.

IT IS FURTHER ORDERED that the Petition for Variance from the Baltimore County Zoning Regulations (“BCZR”) § 504.2 and the Comprehensive Manual of Development Policies (“CMDP”) - Private Yard Areas, pg. 33, to permit a private yard area with a minimum 8 ft. dimension in lieu of the required 15 ft. dimension (Lots 2, 3, 6, 7, 12, 13, 16, 17, 20-26 and 28-32); to permit a private yard area of 475 contiguous sq. ft. in lieu of the required 500 contiguous sq. ft. (Lot 26); to permit no private yard area in lieu of the required 500 contiguous sq. ft. (Lots 8-11, 14 and 15); and, finally, from BCZR § 1B01.2.C.1.B, if necessary, to permit a side building face to a private road (alley) setback of 9 ft. in lieu of the required 25 ft. (Lots 13, 26 and 40), be and hereby is **GRANTED**.

IT IS FURTHER ORDERED that the Special Variance approved by the Director of DEPS under B.C.C. § 33-6-116 also be **GRANTED**.

The relief above is granted herein shall be subject to the following:

- The Developer shall construct, at its sole expense, a 6 ft. tall privacy fence along the entire 298 ft. of the boundary line between the rear of proposed Lots 26 and 27 and the rear boundary line of 2914 N. Rolling Road.

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

PMM:dlm/dlw

Signed
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County