

IN RE: DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING	*	BEFORE THE OFFICE OF
1st Election District	*	ADMINISTRATIVE HEARINGS
1st Council District	*	FOR
(106 110 Maple Avenue)	*	
DAVIS FARMS	*	BALTIMORE COUNTY
MILDRED D. HAMMEN		
EMILY R. WESSEL, TRUSTEE	*	Case Nos: 01-0606 and
TRI-STAR DEVELOPMENT		2020-0105-SPH
<i>Owner/Applicant</i>	*	

* * * * *

**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”). Tri-Star Development, *Owner/Applicant* (herein known as “Developer”) submitted for approval a 2-sheet redlined Development Plan (“Plan”) known as “Davis Farms.”

The Developer proposes 19 single family homes to be built on 21.17 acres of land under various zone classifications. The site is currently developed with existing vacant dwellings, accessory structures and ancillary buildings.

The Developer has also filed a Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve the density, house location, use areas and lot configurations for Lot Nos. 1, 2, 3, 4, 16, 17 and 19 as shown on the Plat to Accompany this Petition (and Development Plan for Davis Farms) as a Density Anomaly that is within the spirit and intent of the BCZR.

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 Plan, which was marked and accepted into evidence as Developer’s Exhibit 2. The property was posted with the Notice of Hearing Officer’s Hearing (“HOH”) and Zoning Notice, both on January 6, 2021, 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 January 29, 2021.

The Developer, William Holland, attended the HOH in support of the Plan but did not testify. Also in attendance were Aaron Kensinger of Little & Associates Engineers, the engineer who prepared and sealed the Plan; Mark Keeley of Traffic Concepts, Inc.; and Henry Leskinen of Eco-Science Professional, Inc. Their *curricula vitae* were admitted as Developer’s Exhibits 3, 12, and 10, respectively. Howard Alderman, Esquire of Levin Gann, P.A. represented the Developer. Numerous neighbors attended to oppose the requested relief.

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 Jason Seidelman, Office of Zoning Review (“OZR”). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (“DEPS”), Vishnu Desai from DPR, and Te-Sheng Huang and Kui Zhao from the Department of Planning (“DOP”).

Each County agency representative testified briefly and indicated that the Plan addressed all comments submitted by their agency, and they each recommended approval of the Plan. First to testify was Jeff Livingston of DEPS, who testified that the Plan addresses all remaining

comments made by the Groundwater Management and Stormwater Management sections at the Development Plan Conference (“DPC”). He explained that the site is served by public water and sewer but that the public sewer does not currently extend beyond 27 and 28 Maple Avenue. Therefore, a “low pressure” sewer line will be installed to serve the 19 proposed homes, which will need to use “grinder pumps” to connect to the pressure sewer line because a gravity sewer line is not feasible. He explained that the maintenance of the stormwater management systems will be the responsibility of the homeowners association. He also testified that the Director of DEPS had approved the Developer’s petition for a Special Forest Variance to allow for the removal of 22 specimen trees.

The next witness was Te-Sheng Huang from DOP. He identified the following exhibits: Final Hearing Report from DOP, which was admitted as County Exhibit 1; the approved Pattern Book, admitted as County Exhibit 2; and the approved School Impact Analysis (“SIA”), admitted as County Exhibit 3. Based on the Plan filing date of February 27, 2020 the SIA was based on the September 2019 school enrollment numbers. Mr. Huang was unable to say why the SIA was based on a proposal of 16 homes, when the Plan proposes 19 homes. This was explained later in the hearing by Kui Zhao, the demographer for DOP who actually approved the SIA. She testified that because there are three existing residential structures on the property that the SIA considered only the additional 16 homes. When community members pointed out that the three existing structures are vacant Ms. Zhao stated that even if the analysis was done using 19 additional homes none of the schools would exceed 115% capacity. Mr. Huang testified that the redlined Plan addresses all the DOP comments from the DPC and that DOP recommends approval.

Jim Hermann from DPR testified next. He identified Developer’s Exhibit 4 as the approved Schematic Landscape Plan. He next explained that these 19 proposed residences require 19,000

square feet of Open Space and that the Plan provides 22,553 square feet of Open Space. He noted that a gazebo and two benches are being provided in response to DPC comments from Rec. & Parks. He too stated that the redlined Plan satisfies all DPR and Rec. & Parks comments and that these agencies recommend approval.

Jason Seidelman from the Office of Zoning Review testified next regarding the Special Hearing relief. As noted above, the subject parcel contains DR 1, DR 2, DR 3.5, RC-5, and RC-8 zones. This creates “density anomalies” on lots 1, 2, 3, 4, 13, 16, 17 and 19 because these lots each have more than one zoning classification. Mr. Alderman explained that this would technically generate a “density unit” for each zone in the lot. However, he further explained that the Special Hearing relief would not result in creating greater overall density for the tract because each lot on the Plan is supported by the density of the zone in which it is located. Mr. Seidelman confirmed that OZR supports the Special Hearing relief.

LaChelle Imwiko testified next on behalf of the office of Real Estate Compliance. She stated that the Developer must add a forest buffer access easement to the dedication table, but that other than that the Plan meets all requirements.

Vishnu Desai then testified on behalf of DPR and the Department of Public Works (“DPW”). He stated that he had done a site visit with Dennis Kennedy of Little & Associates on January 18, 2021, as documented by Developer’s Exhibit 6. He stated that the redlined Plan addresses all DPW comments from the DPC. In response to questions from the community he explained that the individual homeowners will be financially responsible for any problems associated with the grinder pumps – just as homeowners are responsible for any septic system issues. He was asked whether he had observed the severe flood damage and erosion caused by recent flooding of the Sawmill Branch stream adjacent to the tract. He said he had not.

DEVELOPER'S CASE

The engineer, Aaron Kensinger, gave an overview of the development proposal, explaining that the existing structures on the parcel will be razed and that 19 single family detached homes are proposed to be built. Seventeen of the homes will be built on the “loop road” depicted as “Davis Farms Road” on the Plan. The other two homes are to be built directly on Maple Avenue. He identified the original site plan and the redlined Plan, which were admitted as Developer’s Exhibit 1 and 2, respectively. He described a “blue line” amendment which will depict a forest buffer access easement between lots 8 and 9. He testified that Davis Farms Road will be a public road. He described the Schematic Landscape Plan which calls for 133 “planting units” as required by the Baltimore County Landscape Manual (“BCLM”). He identified Developer’s Exhibit 5 as the Stormwater Management Conceptual Computations which were approved on April 22, 2020. He identified Developer’s Exhibit 7 as the Groundwater Management Plan approval dated January 20, 2021. He also identified Developer’s Exhibit 9 as the DOP recommendation of approval also dated January 20, 2021. Mr. Kensinger also discussed the density anomalies and offered the opinion that the Special Hearing relief could be granted within the spirit and intent of the BCZR. He identified Petitioner’s Exhibit 3 as the DOP recommendation in favor of the density anomaly relief. In response to questions from neighbors Mr. Kensinger explained that he could not give a timeframe for the completion of the development because the Developer plans to build the houses as they are sold.

Developer’s next witness was Mark Keeley of Traffic Concepts, Inc. He testified that he is licensed by the Institute of Transportation Engineers (“ITE”). He testified that he had read the minutes of the Community Input Meeting so he is aware of the neighborhood’s concerns about the traffic and safety impacts of the additional 19 homes. He testified that the County’s “ultimate”

road width for Maple Avenue calls for a paved width of 30 ft. and a right of way width of 50 ft. However, he agreed that this would require the county to exercise its eminent domain powers to purchase private land from the homeowners along Maple Avenue – and that the county has no plans to do so. He further acknowledged that the road is as narrow as 16 feet in places and that the only proposed road widening is along the frontage of the Davis Farms development. He testified that, per the county’s regulations, each of the 19 proposed homes is expected to generate 10 “daily trips” for a total of 190 additional trips. He further explained that it is expected that the new homes will add 18 a.m. peak hour trips (7 a.m. to 9 a.m.) and 21 p.m. peak hour trips (4 p.m. to 6 p.m.). He suggested that the proposed loop road will actually improve the ability of larger vehicles to turn around without having to use private driveways on Maple Avenue as they must currently do. He acknowledged that there are approximately 45 existing homes on Maple Avenue so that these 19 additional homes will generate in excess of 40% more traffic on the street. However, he stated that he does not believe this would have a significant impact on the neighbors.

On cross examination Mr. Keeley acknowledged that he was hired by the Developer to perform this traffic study and to provide this testimony. He further acknowledged that he generally testifies on behalf of developers, not on behalf of community groups. He was asked whether these larger 4 to 5 bedroom homes would be more likely to generate more car trips than the smaller homes along Maple Avenue and he replied that he was not sure one way or the other. He acknowledged that Maple Avenue would remain at its current width except for the widening along the frontage of this development, and he acknowledged that there are no sidewalks along the length of Maple Avenue. In response to community questioning he explained that flaggers would be used to manage construction traffic and that the street would never be fully closed during construction. He also acknowledged that he had not done any traffic safety study on the intersection of Maple

Avenue and Frederick Road (Md. Rte. 144). He also acknowledged that the last “corridor” study of Frederick Road was done by the State Highway Administration back in 2013. He could not dispute the estimates of several neighbors that traffic along Frederick Road has increased approximately 50% since 2013. He further acknowledged that the two closest signalized intersections – North Rolling Road and Frederick Road, and South Rolling Road and Frederick Road have been rated “D” for several years. However, on re-direct he pointed out that this proposed development does not have any basic services map issues under county law.

The Developer’s next witness was Henry Leskinen of Eco-Science Professionals, Inc. He testified that he had performed a Forest Stand Delineation and Forest Conservation Analysis of the tract as required by county law. In doing so he identified 22 specimen trees that would need to be removed in order to build the proposed development (under BCC § 33-6-111(b)(5) a specimen tree is defined as one having a diameter of 30 inches or greater at 4.5 feet above ground)). He explained that a significant percentage of the tract (11.2 of the 21.1 acres) is within a 100 year riverine floodplain, and therefore cannot be built on. The site also contains “steep slopes” (greater than 25% grade). He testified that of the 22 specimen trees proposed for removal 11 are in poor condition and one is non-native. He further explained that the Developer applied for and obtained from DEPS a forest conservation variance to remove these trees. He explained that the majority of the trees slated for removal are in open and unforested areas of the tract where the homes are proposed. He stressed that much of the contiguous forest on the tract will be protected by forest buffer and forest conservation easements. He identified Developer’s Exhibit 11 as the DEPS approval of the special variance.

COMMUNITY TESTIMONY AND EVIDENCE

Numerous residents of Maple Road testified in opposition to the proposed development. In

addition, numerous letters, emails, videos, photos and a community petition were received expressing opposition. The primary concerns expressed are traffic increases, traffic and pedestrian safety, environmental impacts, and school crowding.

Eileen and Bruce Leaman testified that they have lived at 27 Maple Avenue for 39 years. They described the unique nature of this dead-end narrow road. Mrs. Leaman testified that this narrow street already gets burdened by overflow traffic from the church on the corner and from the adjacent Five Oaks Swim Club. She pointed out that the only ingress and egress for the 46 existing homes is the intersection of Maple Avenue and Frederick Road. She testified that in the morning rush hour cars back up from the intersection at South Rolling Road all the way down past Maple Avenue; and in the afternoon rush cars back up from North Rolling Road past Maple Avenue. She submitted two short videos showing the huge volume of traffic on Frederick Road, which were admitted, collectively, as Community Exhibit 5. She also submitted documents, maps and photos that were admitted as Community Exhibits 6, 7, 8, and 9. She testified that there are numerous auto accidents at the Maple Avenue and Frederick Road intersection every year, and that cars travelling westbound on Frederick Road travel at significant speeds down a steep hill which bottoms out right at Maple Avenue, creating significant hazards for cars stopped to turn left onto Maple, and to pedestrians trying to cross Frederick from Maple. She pointed out that Maple Avenue was finally repaved by the County last year and laments that it would need to be torn up again to install the sewer and other infrastructure needed for the proposed development. She testified that the existing terra cotta sewer main dates to 1930, and the neighbors are concerned about odors and leaks from the proposed grinder pump connections. Finally, she testified about the recent surge in flooding events caused by climate change, and described a recent flood that washed out the historic stone bridge over Saw Mill Branch adjacent to the proposed development.

See, Photo of flood damage (Community Exhibit 15). In conclusion the Leamans asked that no more than four new houses be allowed.

Maria Czajkowski testified next. She lives directly across Frederick Road from the Maple Avenue intersection. She testified that traffic in the area has gotten worse and worse and that it can take as much as 5 minutes to get onto Frederick Road during the morning and evening rush hours. She further testified that there are a lot of children in the area and that pedestrian and bike safety are real concerns. She described hearing auto accidents and the ensuing ambulance sirens on a regular basis.

Albert Cunniff testified next. He has lived on Maple Avenue since 1976. He stressed that Maple Avenue is unique among streets in the area because of its narrow width, rural feel, and its dead end at Patapsco State Park. He explained that there is already a high volume of pedestrians on Maple Avenue because people from many of the surrounding streets use Maple Avenue to access the park, either on foot or on bikes. Because there are no sidewalks this pedestrian traffic must use the road itself. He submitted a photo of three people spanning the width of Maple Avenue by simply standing abreast with their arms partially outstretched. (Community Exhibit 2). He echoed the concerns about the environmental and traffic impacts from the proposed development. He submitted a diagram of the existing homes on the street and the 19 proposed homes at the end (Community Exhibit 3), and likened the proposed development to “a watermelon hanging from the branch of an apple tree” – the branch being Maple Avenue.

Christy Katz testified that she lives at 7 Maple Avenue. She has young children and is concerned about their safety. She testified that there are approximately 30 young children on the street and that they must walk to the bus stop at the end of Maple Avenue because the street is too narrow for the school buses to traverse. She testified that over 100 community members attended

the Community Input Meeting and raised the same concerns that she and others are still expressing about traffic impacts, pedestrian safety, environmental impacts, and current and projected school crowding. She stated that she doesn't feel like the Developer has addressed any of these concerns. She questioned whether the county development regulations adequately address the realities of climate change. She pointed out that this site is only a couple miles west of Ellicott City, which has suffered devastating flood damage in two recent super storm events. She submitted photos of Maple Avenue which were admitted as Community Exhibit 10, and a petition opposing the development signed by more than 150 community members, which was admitted as Community Exhibit 11.

David Hunter testified next. He lives at 125 Maple, directly across from the proposed development. He stated that he understands the Developer's right to develop this land but he believes that the Developer can get a fair economic return without building all of the 19 proposed houses. He disagreed with Mr. Keeley's description of Maple Avenue as a "typical" Catonsville street because it is a very narrow, dead end street. He also does not understand how 190 additional daily car trips could be seen as insignificant.

Monica Simonsen testified next and echoed all these concerns. She lives at 17 Maple Avenue. She too has young children and is concerned about pedestrian safety and school crowding. She testified that she has reviewed BCPS projections showing overcrowding in all the district schools in the next couple years. She testified about the impacts caused by the construction of two new homes on either side of her, including flood damage and damage to her lawn caused by construction vehicles. She submitted a series of photos showing the condition of Maple Avenue and the effect of construction trucks on the street. (Community Exhibit 14). She pointed out that the proposed 19 home development will clog their street for years since the Developer plans to

build the development piecemeal as the lots are sold. Finally, she stated that there would have been more neighborhood opposition at this hearing but that many of the residents of Maple Avenue are older and not conversant with the technology needed to participate. She asked, therefore, for me to give weight to the number of persons who signed the petition opposing the project. She also submitted a written statement which was admitted as Community Exhibit 13.

Finally, Sarah Bennett, a 30 year resident of Maple Avenue testified about all these concerns. In addition, she raised concern about the presence of lead paint on the old existing structures on the property. She asked that proper measures be used to abate the lead issues when the structures are razed, especially given the large number of children living on this street. She submitted a photo of flood damage at the end of Maple Avenue which was admitted as Community Exhibit 15.

On cross-examination Mr. Alderman asked each of these witnesses whether they had sought to get this parcel rezoned via the quadrennial Comprehensive Zoning Map Process (“CZMP”). None had done so, although most did not seem clear about what the CZMP process is, or how they would have participated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The law is clear that the Master Plan is a binding, regulatory mechanism in development cases in Baltimore County. This was the holding of *HNS Dev. v. People’s Counsel*, 425 Md. 436 (2012), and is based on that court’s interpretation of BCC § 32-4-102(a)(1). The aforementioned statute requires “all development of land [to] conform to the Master Plan.” The 2020 Master Plan states that existing community members are supposed to have “an integral role in the creation of sustainable developments through collaborative efforts.”

Further, the introduction to the 2020 Master Plan document states that “[m]any existing stable residential neighborhoods should not be disturbed for additional development.” Based on the record evidence I do not believe the construction of 19 homes on this bucolic street, adjacent to a 100 year floodplain and Patapsco State Park is consistent with the Master Plan’s vision for T-2 Rural Residential and T-3 Sub-Urban transects applicable to this tract. As explained below, I find that a site plan with fewer homes on larger lots would be more consistent with that vision.¹

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 be noted that in the *Elm Street* case the community opponents did not question the agency witnesses or submit evidence to rebut the agency recommendations. And, as will be explained, the community witnesses in this case *did* provide substantial testimony and evidence that undermines some of the agency recommendations on critical issues.

My analysis begins with the stated legislative intent of the Development Law and the Master Plan. BCC § 32-4-103, captioned “PURPOSES OF THE TITLE” provides in relevant part as follows:

“(a) *In general.* This title is adopted for the following purposes:

- (1) To protect and provide for the public health, safety, and general welfare of the county;

¹ In the event this Opinion and Order is vacated and reversed, this is to confirm that the Director’s Approval of the Special Variance under BCC § 33-6-116 for the removal of 22 specimen trees is hereby AFFIRMED.

- (2) To implement the future growth and development of the county in accordance with the Master Plan;
- (6) To protect the viability of the county's existing communities by ensuring that new development and redevelopment is compatible with the neighborhood and minimizes adverse environmental, traffic, and economic impacts on the surrounding community.”

With these guiding principles in mind I will now address the material issues in this case topic by topic.

Tipping Point Issues

Some of the issues raised by the community are perhaps not, in and of themselves, enough to warrant a denial of the development Plan. For instance, the School Impact Study, based on enrollment numbers from September 2019, shows that none of the schools is currently over the 115% threshold. Yet as several of the community witnesses pointed out, the official Baltimore County Public School (“BCPS”) projections show overcrowding in the immediate future – indeed before this planned development is anywhere near completion. The BCPS’ “Educational Facilities Master Plan 2020” report states that for the Southwest Planning District “[t]here are no high schools in the region that are overcrowded (115% or above capacity) as of the 2019–2020 school year, *although Catonsville high school is projected to exceed 115 percent of capacity in 2022 and will remain severely overcrowded through 2029.*”

Likewise, the community is justifiably concerned about the environmental impacts from this proposed development – especially given the proximity of this project to a “100 year” floodplain, and to Patapsco State Park. As several neighbors pointed out, these “100 year” super storms now occur virtually every year. And the devastating flood damage in Ellicott City is a cautionary tale because it has been attributed in large part to the overdevelopment and resulting loss of forest buffer along the perimeter of that historic town.

Further, the unrebutted testimony is that the sewer main that will support this proposed development is a terra cotta pipe installed in 1930. That fact, combined with the 19 proposed grinder pump connections, are cause for legitimate concern. In Case No. 09-0861, the Administrative Law Judge observed that “Baltimore County’s sewer system - - like that of nearly all major east coast cities - - is antiquated and in dire need of repair. So serious is the problem that Baltimore County entered into a consent decree with the Environmental Protection Agency (“EPA”) which requires the County to undertake a comprehensive evaluation of its sewer system and take corrective action to repair or replace defective portions of this infrastructure.” That work is far from complete, and obviously has not yet reached Maple Avenue, which still has numerous homes on septic systems.

In addition, the neighbors on Maple Avenue have good reason to lament the impact this development will have on their daily quality of life. They note that after decades of complaints to county officials Maple Avenue was finally repaved in the last couple years, and now it will be torn up again to facilitate the proposed development. Photos submitted by the community show that large construction vehicles associated with recent home construction obstruct nearly the entire width of Maple Avenue. *See*, Community Exhibits 4 and 14. The Developer’s engineer and traffic expert testified that Maple Avenue will never actually be closed to traffic during these years of construction, but they acknowledge that traffic will have to be managed by “flaggers,” and we all know how exasperating that system can be when we have someplace we need to be. And these substantial impacts can be expected to last several years, while the development is built out lot by lot, per the Developer’s stated plan.

Further, the Plan raises other questions that are not addressed in the Pattern Book and which were not addressed at the hearing. The “performance standards” set forth in BCZR Sec. 260 provide, in relevant part, as follows:

§ 260.3. - Open space.

5. Provide street and parking accommodations which complement the surrounding

With respect to § 260.3 this proposed development fails to incorporate several of these requirements. Most significantly it does not provide “a linked network of natural and landscaped open areas connected by pedestrian/bike trails.” And there is no link to the surrounding neighborhood or to the adjacent State Park. And with respect to § 260.4, this proposed development does not satisfy the parking or connectivity requirements. In sum, these “tipping point” issues become significant in the aggregate and in my considered view the Plan as proposed cannot be approved, especially when considered with the issues discussed below.

Traffic Safety and Impacts

Perhaps more significant than the issues just discussed are the serious traffic issues raised by the community. First, the neighbors are understandably baffled by Mr. Keeley’s testimony that a 40% or greater increase in traffic volume is “insignificant.” It is not – especially on this narrow street with no sidewalks. Further, as discussed at the hearing, it seems clear that the estimate of 190 additional trips is low in this new age of incessant Amazon deliveries. Numerous residents of Maple Avenue described the already high levels of pedestrian traffic on Maple Avenue – some by children who live on the street, and some from the surrounding neighborhoods that use Maple to access the state park, including a high volume of mountain bikers. As noted, the children on this street must traverse the length of it at the beginning and end of every school day in order to reach the school bus stop on Frederick Road, since Maple Avenue is too narrow to accommodate the buses. In short, pedestrian safety is a real issue and would be substantially exacerbated by 19 additional homes at the very end of the street – since each of the estimated 190 trips will traverse the entire length of Maple Avenue.

Further, and of greater concern, are the automobile safety and traffic volume issues raised by the community. The videos, photos, and testimony all show beyond debate that the intersection of Maple Avenue and Frederick Road is already a nightmare. The neighbor who lives right on the corner described the familiar sounds of colliding vehicles, followed by ambulance sirens. The videos and photos show the dangerous conditions caused by vehicles traveling west down the long hill on Frederick Road toward its intersection with Maple Avenue at the bottom. And traffic volume and congestion are already horrible, even before the addition of 190 vehicle trips a day. The DOP noted that the two closest signalized intersections (Frederick and North and South Rolling Roads) are “D” intersections, and therefore not failing under the county regulations. But the testimony and photographic evidence show horrendous morning and evening rush hour backups on Frederick Road. One neighbor estimated that it takes approximately 5 minutes to get onto Frederick from Maple or Dutton Avenues during rush hour. As a former resident of Catonsville I recall evening rush hour traffic backing up on South Rolling Road from Frederick Avenue all the way back to the Community College, and sometimes to the ramp of I-195. The addition of 190 daily trips to this existing mess is just not tenable. I understand that this proposed development tract is not covered by any basic services maps, but it has previously been decided that the maps are not singularly dispositive. As the ALJ explained in Case No. 09-0861, *supra*, at p. 25:

[I]t is certainly understandable why the County would be reticent to include a property on one of the basic services maps. The effect of such inclusion is a legislative moratorium, during which the county is expected to undertake the necessary repairs to the deficient infrastructure. Should this state of affairs persist for longer than 18 months, it is likely a court would find the owner’s property had been “taken,” which requires the payment of just compensation under the state and federal constitutions. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002). This is yet another reason why I do not believe the maps are dispositive in any given case.

In my view this reasoning applies here.

Master Plan

As noted by the Planning Office in their Final HOH Report, this tract consists of TR 2 Rural Residential and TR 3 Sub-Urban transects. The GIS database indicates that the tract is primarily in the TR 3 transect. The TR 2 Rural Residential transect is described as consisting of “large lot single-family detached housing,” with setbacks “generally 50 plus feet. Lots are deep to accommodate a larger backyard. Density varies between 2 to 5 acres per dwelling.” And the TR 3 transect describes “low density residential areas, adjacent to higher zones that contain mixed use. Landscaping is naturalistic and setbacks are relatively deep.”

In my view the development Plan in this case does not comply with the Master Plan vision for these transects. As the “Lot Area Table” on the Plan shows, the 19 proposed lots range from .27 acres to .63 acres, with the majority of lots falling in the .30 to .45 range. And the “Typical Lot Layout” on the Plan for the lots in the DR 1 and DR 2 zones show front setbacks of as little as 25’, and side building-to-building distances of as little as 30’. This is how 19 four to five bedroom homes are squeezed onto the buildable portion of this tract.

Conclusion

I am aware that the county agencies have attested that the Plan meets each agency’s own minimum standards in isolation. However, it is my job to consider the global impacts of the Plan, in light of all the evidence, and with the Master Plan and Development Law in mind. As noted above, the Master Plan mandates that community members are to have “an integral role in the creation of sustainable developments through collaborative efforts.” And one of the express legislative purposes of the Development Law is “[t]o protect the viability of the county's existing communities by ensuring that new development and redevelopment is compatible with the

neighborhood and minimizes adverse environmental, traffic, and economic impacts on the surrounding community.” BCC § 32-4-103(a)(6). Likewise, the Master Plan provides that “[m]any existing stable residential neighborhoods should not be disturbed for additional development.”

The community acknowledges that the owners of the subject property have the right to develop the tract to some reasonable degree. However, they are justifiably concerned about the “adverse environmental, traffic, and economic impacts” of this proposed project. Many in the community asked that I approve no more than four new homes at this site. The Developer did not provide any testimony or evidence concerning the economic viability of the project based on any specific number of units. In fact, the Developer did not testify at all. Certainly the owner of this parcel has the right to build some number of homes. However, my task is to approve or deny the plan that was submitted, and the Plan that was submitted – for 19 four to five bedroom houses - cannot in my view be approved without severely impacting the Maple Avenue neighborhood. I must therefore deny approval, as I believe I am bound to do by the Development Law and the Master Plan.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 12th day of **February, 2021**, that the “**DAVIS FARMS**” Plan marked and accepted into evidence as Developer’s Exhibit 2, be and hereby is **DENIED**; and,

IT IS FURTHER ORDERED that, in the event the denial of the Development Plan is reversed and the Plan is approved, the Petition for Special Hearing from the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to approve the density, house location, use areas and lot configurations for Lot Nos. 1, 2, 3, 4, 16, 17 & 19 as shown on the Plat to Accompany this Petition (and Development Plan for Davis Farms) as a Density Anomaly is **GRANTED**; and,

IT IS FURTHER ORDERED that, in the event the denial of the Development Plan is reversed and the Plan is approved, the Special Forest Variance, as approved by the Director of DEPS, is also, **GRANTED**.

Any appeal of this Order shall be taken in accordance with BCC § 32-4-281.

PMM:dlm/dlw

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