

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
8th Election District		
3rd Council District	*	ADMINISTRATIVE HEARINGS
9690 Deereco Road &	*	FOR
375 W. Padonia Road		
Atapco Deereco, LLC	*	BALTIMORE COUNTY
Atapco Padonia, LLC	*	CASE NO. 08-0144
<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 proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code (“BCC”). Atapco Deereco, LLC and Atapco Padonia, LLC *Owner/Applicant* (herein known as “Developer”) submitted for approval a 2-sheet redlined Development Plan known as “9690 Deereco Road & 375 W. Padonia Road”) (“Plan”) prepared and sealed by Michael J. Pieranunzi of Century Engineering, Inc.

The Developer proposes to construct an apartment building with a total of 230 units comprised of studio, one, and two bedroom units and associated parking. This site is located within the Urban Rural Demarcation Line (“URDL”) and Metropolitan District. It is zoned BM-CCC and is classified as a T-5 “Urban Center Zone” transect in the 2020 Master Plan.

Details of the proposed development are more fully depicted on the redlined 2-sheet Development Plan that was marked and accepted into evidence as Developer’s Exhibit 1. The property was posted with the Notice of Hearing Officer’s Hearing (“HOH”) on September 22, 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 October 22,

2020 at 10:00 a.m.

The Developer, David Lazas attended the HOH in support of the Plan. Also in attendance were Michael Pieranunzi and Jill Schopf, Professional Engineers with Century Engineering. Their *curricula vitae* were admitted as Developer's Exhibits 2 & 3, respectively. David Karceski, Esquire and Christopher D. Mudd, Esquire with Venable, LLP, represented the Developer. Several neighbors attended the hearing and expressed concerns about traffic and school crowding.

AGENCY WITNESSES

Numerous representatives of the various Baltimore County agencies who reviewed the Plan also attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections ("PAI"): Darryl Putty, Project Manager, James Hermann (Development Plans Review ("DPR")), Brad Knatz from Real Estate Compliance, and Jason Seidelman, Office of Zoning Review ("OZR"). Also appearing on behalf of the County was Steve Ford from the Department of Environmental Protection and Sustainability ("DEPS"), and Jenifer Nugent 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. Specifically, Mr. Hermann testified that a schematic landscape plan had been approved (County Exhibit No. 1), as well as an open space fee-in-lieu in the amount of \$30,000.00 (Petitioner's Exhibit No. 11). Jason Seidelman from zoning review confirmed that the site plan meets all zoning requirements, provided there are no residential uses on the first floor of the building, which is acknowledged in note 38 of the site plan. Jenifer Nugent testified that the DOP had reviewed and approved the School Impact Analysis (Developer's Exhibit No. 10), and the Pattern book (Developer's Exhibit No. 18), and that the DOP recommends approval of the development plan. Finally, Steve Ford of DEPS testified that a

100 year floodplain study and approval would be required in phase 2 of the project, but that otherwise the redlined plan addressed all that agency's comments and they too recommend approval of the plan. In sum, all County agencies recommended approval of the Plan.

DEVELOPER'S CASE

Michael Pieranunzi and Jill Schopf, with Century Engineering testified on behalf of the Developer. They were accepted as experts in the fields of engineering, landscape architecture, development, and the BCZR. Their curricula vitae were admitted as Developer's Exhibits 2 and 3. Mr. Pieranunzi explained the development proposal in detail, including modifications made in response to concerns raised at the Community Input Meeting and the Development Plan Conference. Mr. Pieranunzi noted that the property is zoned BM-CCC and is classified as a T-5 "Urban Center Zone" transect in the 2020 Master Plan; therefore, this proposed apartment complex is compatible with the Master Plan. He further explained that the proposed modifications to the two existing structures on the property were granted exemptions under Baltimore County Code Sec. 32-4-106 (a) and (b). He explained that amenity open space is being provided on the third floor of the proposed structure in the form of a swimming pool, deck area and community room. An outdoor dog park and landscaping amenities are also being provided as additional amenity open space. A "Declaration of Covenants and Restrictions" was also submitted through this witness. (Developer's Exhibit No. 14). This recorded instrument memorializes an agreement between the Developer and the Greater Timonium Community Council, Inc. whereby the Developer has agreed to, among other things, limit the number of apartments to 230. He further testified that the proposed development meets all setback and height restrictions and that no variances are being requested. Finally, Mr. Pieranunzi testified that in his expert opinion the development plan meets all the requirements of the County Code and zoning regulations.

On cross-examination from the community Mr. Pieranunzi explained the development plan in more detail, including the stormwater management facilities, and various proposed landscaping amenities, including bike racks, and pedestrian paths connecting the development with the nearby MTA rail and bus routes. He also testified that the proposed apartments will be “market rate” rentals, not low income.

Ms. Schopf then explained the landscape plan in detail, and on cross-examination explained the stormwater management design in greater detail. She also testified that no off site easements will be required in order to construct the development. She also explained that the Concept Landscape Plan was just that – conceptual; and that a Final Landscape Plan must be submitted and approved in phase 2 of the project. She too testified that in her expert opinion the development plan meets all provisions of the County Code and BCZR.

David Lazas testified next. He is the Development Director for Atapco Properties. He testified that Atapco has developed and operated approximately two thousand “Class A” market rate apartments in Maryland, Virginia, North Carolina and Indiana. He submitted photos of several other Atapco apartment complexes that are similar in design to this proposed development. (Developer’s Exhibit No. 16). He testified that they are committed to building a high quality complex that will rent at market rates. He explained that they were attracted to the site because of its proximity to mass transit and to existing office and retail uses.

Glenn Cook, a traffic engineering expert testified next. He testified that he worked for the State Highway Administration for many years and retired as the Chief of the SHA Office of Engineering. He is currently a Senior Vice President with the Traffic Group, Inc. His curriculum vitae was admitted as Developer’s Exhibit 20 and he was accepted as an expert in the field of traffic engineering. Mr. Cook testified that he performed a traffic impact analysis for this proposed

development. (Developer's Exhibit 21). He acknowledged that the intersection of Padonia and Deereco roads is currently a failing intersection which is identified on the 2020 Basic Services Transportation Map. (Developer's Exhibits 22 and 23). However, he submitted an Inter-Office memo from the Bureau of Traffic Engineering that recommended that the intersection be upgraded from an F to a C. However, he acknowledged that the County Council rejected this recommendation in 2020 and maintained the intersection as within a failing traffic shed. Cook testified that he was told by the Bureau of Traffic Engineering that the Council did so because they were concerned about the continuing impacts in this area caused by ongoing construction at the Padonia Road ramps to I-83, which are in close proximity to this intersection. Mr. Cook then explained in detail the proposed road improvements that the Developer has planned for Deereco and Padonia Road, including an additional left turn lane onto Padonia from Deereco, as well as a dedicated through lane to Beaver Dam Road and dedicated right turn lane onto Padonia. He testified that these improvements will bring this intersection up to at least a D level, which is sufficient to allow this proposed development to proceed. Mr. Lazas then explained that these road improvements will be entirely funded by Atapco and that they have already received the required County permits and that construction is underway.

COMMUNITY WITNESSES

As noted above, several members of the community attended the hearing and voiced their opposition to the proposed development. Their primary concerns were traffic congestion and school crowding. They also lamented the further urbanization of this area.

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 Developer’s experts was unrebutted. While I understand the Community’s concerns about traffic and density, I note that this area is classified as an Urban Center “T-5” Transect in the 2020 Master Plan. The stated Master Plan vision for these “Urban Centers” is for “higher density mixed-use buildings that accommodate retail, offices, townhouses and apartments.” That is exactly what is proposed here, especially since the entire project, when completed, will include office space, retail space, and hotel space in addition to these apartments. Further, as noted above, the Greater Timonium Community Council, Inc. negotiated an agreement with Atapco that limits the number of apartments in this complex in exchange for the maintenance of the existing zoning classification during the 2020 CZMP. *See*, Developer’s Exhibit 14.

After considering all the record evidence, including the recommendations of all the County agencies, I find that the Developer has satisfied its burden of proof, and is, therefore, entitled to approval of the Plan, subject to the conditions below.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **30th** day of **October, 2020**, that the “**9690 Deereco Road and 375 W. Padonia Road**” Plan marked and accepted into evidence as Developer’s Exhibit 1, be and hereby is **APPROVED**.

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

- Any appeal of this Order shall be taken in accordance with Baltimore County Code, § 32-4-281.
- Pursuant to BCZR § 4A02.3.G, no building permits may be issued until the intersection of Deereco and Padonia Roads is removed from the Basic Services Map by the Baltimore County Council, and the intersection is rated no less than “D”.

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

PMM:dlm