

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>	*	

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**ADMINISTRATIVE LAW JUDGE'S
ORDER ON REMAND RE:
COMBINED DEVELOPMENT PLAN AND ZONING PETITION**

PROCEDURAL HISTORY

On February 12, 2021 the undersigned issued an Opinion and Order in this case denying approval of the Development Plans. One of the grounds upon which the Plan was denied was that it was in conflict with the 2020 Master Plan. The Developer appealed. By Opinion dated July 14, 2021 the Board of Appeals remanded the case to the undersigned with instructions to “immediately refer the matter to the Baltimore County Planning Board pursuant to Baltimore County Code § 32-4-231.” The undersigned followed this directive. On October 12, 2021 Stephen Lafferty, the Director of the Department of Planning (“DOP”) and Secretary to the Baltimore County Planning Board, authored a letter to the undersigned informing me that on October 7, 2021 the Planning Board, acting on the recommendation of the DOP, had voted to confirm that there was no Master Plan conflict, and that the Development Plan should be approved. *See*, Planning Board Decision and DOP Recommendation, attached collectively as Exhibit 1, and incorporated herein. This

decision was forwarded to the undersigned and to the County Council pursuant to BCC § 32-4-232(b)(2) and (b)(3), respectively.

Pursuant to BCC § 32-4-232(f)(1) the Decision of the Planning Board is binding upon the Administrative Law Judge and shall be incorporated into the final Order unless the County Council overrules the Decision of the Planning Board pursuant to BCC § 32-4-232(f)(2). The County Council took the matter up and on November 15, 2021 Resolution No. 137-21 was introduced. *See*, County Council Resolution No. 137-21, attached as Exhibit 2, and incorporated herein. The Resolution required the Council to consider whether to affirm or overrule the Planning Board's Decision. The Parties and People's Counsel were informed that the Resolution would be considered at the County Council's November 29, 2021 Work Session; at which time the Parties and People's Counsel would be afforded the opportunity to present their respective positions. All were also afforded the right to submit written arguments.

At the November 29, 2021 Work Session counsel for the Parties, People's Counsel, and several neighbors argued their positions and answered questions posed by Councilmembers. Thereafter, on December 6, 2021 the County Council voted 7-0 to ADOPT the Resolution, thereby overruling the Planning Board's Decision and finding that the Development Plan *is* in conflict with the 2020 Master Plan. *See*, Adopted Resolution, Exhibit 2. By letter dated December 7, 2021, Thomas H. Bostwick, Legislative Counsel and Secretary to the County Council, sent a copy of Resolution 137-21 to the undersigned.

DECISION

Pursuant to BCC § 32-4-102(a)(1) "all development of land *shall* conform to the Master Plan." (emphasis added). In *HNS Development, Inc. v. People's Counsel*, 425 Md. 436, 451 (2012), the court of appeals closely analyzed the Baltimore County development law and held that a

development plan could not be approved if it did not conform to the Master Plan. As just explained, the County Council adopted Resolution 137-21, finding that the Development Plan in this case does not conform to the 2020 Master Plan. I shall therefore reaffirm my February 12, 2021 Opinion and Order, and it is hereby incorporated in full and attached hereto.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **14th** day of **December, 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.

Signed

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County