

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
15 th Election District		
6 th Council District	*	ADMINISTRATIVE HEARINGS
(503 Middle River Road)		
	*	FOR
EICHBERG PROPERTY		
	*	BALTIMORE COUNTY
ROSS & PAULA EICHBERG	*	CASE NO. 15-0874
<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”). Ross & Paula Eichberg, *Owners/Applicants* (herein known as “Developer”) submitted for approval a 1-sheet redlined Development Plan ("Plan") prepared by Aaron Kensinger of Little & Associates, known as “Eichberg Property”. The original Plan was admitted as Petitioner’s Exhibit 1 and a Redline Plan was admitted as Petitioner’s Exhibit 3.

The property was properly posted and advertised. The undersigned conducted a public Webex hearing on October 28, 2021 and on December 14, 2021 in lieu of an in-person public hearing due to ongoing Covid restrictions.

The owner/petitioner, Ross Eichberg, attended the hearing in support of the Plan. Also in attendance was Aaron Kensinger, of Century Engineering, the firm that prepared the site plan. His *curriculum vitae* was admitted as Developer’s Exhibit 6 and he was accepted as an expert in engineering, land planning, and in the Baltimore County development law and zoning regulations. Lawrence Schmidt, Esquire of Smith, Gildea and Schmidt, represented the Developer. Joan Mealey Kruger from the Bird River Neighborhood Association also attended and voiced some

concerns about the project.

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, Jim Hermann and Mr. Patel from (Development Plans Review (“DPR”), and Christina Frink, Office of Zoning Review (“OZR”). Also appearing on behalf of the County were Lachelle Imwiko from Real Estate Compliance, Stephen Ford from the Department of Environmental Protection and Sustainability (“DEPS”), and Te-Sheng Huang from the Department of Planning (“DOP”).

Christina Frink testified that the Office of Zoning Review had completed its review of the Plan and recommends approval. Jim Herrman then testified on behalf of DPR that he is the County Landscape Architect and had approved the Schematic Landscape Plan for this development on October 27, 2021. It was admitted as County Exhibit 1. He further explained that a more detailed Landscape Plan will have to be submitted and approved in Phase II of the development process. On behalf of Recreation & Parks he then explained that a “fee in lieu” open space waiver had been approved whereby the Developer will pay \$35,100 in lieu of providing the required 10,000 sq. ft. of open space for the proposed 10 units. The waiver was admitted as County Exhibit 2. He explained that this is permitted and often done for projects requiring 20,000 sq. ft. or less of open space. Finally, he stated that these agencies also recommend approval of the Plan.

Next, Te-Shang “Emery” Huang testified on behalf of the DOP. He identified Developer’s Exhibit 4 as the approved School Impact Analysis, showing that this proposed development (and any others in the pipeline in this school district) will not push any of the public schools in the district beyond the acceptable 115% of State Rated Capacity. He further identified Developer’s

Exhibit 5 as the Revised Pattern Book that DOP had reviewed and approved. He further noted that DOP believes the Plan conforms with the 2020 Master plan and is otherwise compatible with the neighborhood. He testified that DOP therefore recommends approval of the Plan subject to one condition – that the Developer should coordinate with the Department of Public Works to provide crosswalks on Middle River and Pawnee Roads in conformance with the Baltimore County “Complete Street” policy. The DOP’s Final Hearing Officer Report was admitted as County Exhibit 3.

Steve Ford from DEPS was the last County witness. He testified on behalf of environmental impact review (“EIR”), ground water management (“GWM”), and storm water management (“SWM”). He stated that EIR and GWM recommend approval of the Plan but that SWM had just received the Redline Plan and had not had adequate time to review it. He and Mr. Schmidt therefore both asked that the hearing record be left open and another date be scheduled to consider the SWM aspect of the Plan once DEPS had completed its review. The undersigned agreed to do so. Thereafter, on December 14, 2021 the hearing was re-opened and Mr. Ford testified that the redlined concept SWM plan had been reviewed and approved by Andrew Fish in the Stormwater Management Section, and therefore DEPS recommends plan approval.

DEVELOPER’S CASE

Mr. Schmidt then gave an overview of the Developer’s case. He explained that the subject property is approximately 1.6 gross acres and is zoned DR 16, which would allow a maximum of 25 units. He explained that a Plan was previously approved in 2009 for eleven single family homes but that that plan had never vested and had lapsed. This proposal calls for 10 semi-detached single family houses. Two will face Middle River Road and the remaining eight will front on Pawnee Road.

The Developer's sole witness was Aaron Kensinger, with Little and Associates, a division of Century Engineering. Mr. Kensinger was accepted as an expert in land use and development and in the BCZR. He explained the development proposal in some detail and upon questions from the community he further explained the specifications of the storm water management system. He also addressed the community's concerns about the two units that are proposed to front onto Middle River Road. He testified that a site visit is done by the Bureau of Traffic Engineering during which they measure all site lines and distances to insure the traffic safety of the Plan. Mr. Kensinger testified that in his expert opinion the Plan meets all State and County laws and regulations and should therefore be approved.

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 un rebutted. 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, therefore, is entitled to approval of the Plan.

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, the "Eichberg Property" shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **17th** day of **December, 2021**, that the "**Eighberg Property** 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:

1. Petitioner shall coordinate with the Department of Public Works and Transportation to provide crosswalks, at Petitioner's sole expense, on Middle River and Pawnee Roads in conformance with the Baltimore County Complete Street Policy as adopted by Resolution 123-16.

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

Signed

PAUL M. MAYHEW
Administrative Law Judge
for Baltimore County

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