

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
15 th Election District		
6th Council District	*	ADMINISTRATIVE HEARINGS
(9925 Bird River Road)		
	*	FOR
SPIEGEL PROPERTY	*	BALTIMORE COUNTY
Campbell Bird River, LLC	*	CASE NO. 15-1026
<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”). Campbell Bird River, LLC, *Owner/Applicant* (herein known as “Developer”) submitted for approval a 4-sheet redlined Development Plan (“Plan”) prepared by Little & Associates, Inc., known as “Spiegel Property”. The Plan was admitted as Developer’s Exhibit 1.

The Developer proposes 89 single-family detached dwellings units on 62.26 gross acres of land zone DR 2 and DR 3.5. The site is currently improved with a dwelling, a barn and other ancillary and accessory structures, which will all be razed. The site has environmental constraints including areas of wetlands, floodplain and stream buffers associated with Windlass Run. There are additional forest and utility easements and a storm water retention pond operated by Baltimore County that restricts the site. The Spiegel Property is located in the Middle River Design Review Panel Area, and the MD 43 Overlay District.

The property was posted with the Notice of Hearing Officer’s Hearing (“HOH”) on June 15, 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 July 16, 2021 at 10:00 a.m. Neil Greenberg appeared at the hearing on behalf of the Developer, Campbell Bird River, LLC. Also appearing was Aaron Kensinger with Little & Associates Engineering, the engineering firm that prepared the Plan. David Gildea and Jason Vettori, Esquire of Schmidt, Gildea & Smith, appeared and represented the Developer. Robert Bendler, the President of the Essex Middle River Civic Council, an umbrella group of twenty area community associations, testified in support of 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 Eugene Cauley from Development Plans Review (“DPR”) and Recreation and Parks (“DRP”), Brad Knatz from Real Estate Compliance, and Gary Hucik, Office of Zoning Review (“OZR”). Also appearing on behalf of the County were Stephen Ford from the Department of Environmental Protection and Sustainability (“DEPS”), and Jenifer Nugent and Brett 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 testified that the Middle River Design Review Panel recommended approval of the Plan on March 25, 2021. In addition, he explained that the DOP recommends certain Modifications of Standards under BCZR § 259.11.A.4.a(2), which applies to this property as part of the MD 43 Overlay District. He further explained that the School Impact Analysis had been approved, (Developer’s Exhibit 22). He explained that Vincent Farms Elementary has a

projected enrollment of 123.80% of projected State Rated Capacity, but that there is sufficient excess capacity at five adjacent elementary school districts so this project is permitted under B.C.C. § 32-6-103(f)(3). Neither Middle River Middle School nor Kenwood High School are projected to exceed 115% of State Rated Capacity. Finally, he testified that the Plan is in compliance with the performance standards of BCZR § 260, and that DOP had approved the redlined Pattern Book, which was admitted as Developer's Exhibit 2. In conclusion, he stated that the DOP recommends approval of the Plan, as reflected in their Final HOH Report, dated July 16, 2021 (County Exhibit 1).

Mr. Hermann testified next on behalf of Plans Review and Recreation and Parks. He explained that this 89 unit project would require 89,000 sq. ft. or 2.04 acres of Open Space, and that the Developer is actually providing 181,570 sq. ft., or 4.17 acres of Open Space. He explained that the Developer is also constructing what will be a public park at a cost of \$281,600.00. Finally, he testified that a Schematic Landscape Plan had been approved on July 7, 2021 (County Exhibit 2), and that both these agencies recommend approval of the Plan.

Next to testify was Eugene Cauley, representing Plans Review and DPW. He explained that these agencies had made 21 site specific comments at the final Development Review Conference and that the redlined Plan satisfies each of those comments. He further testified that the Plan conforms to all applicable provisions of the B.C.C. and BCZR, and that these agencies also recommend approval.

Gary Hucik from OZR then testified that the Plan and Pattern Book are in compliance with all applicable provisions of the B.C.C. and BCZR, and that Zoning Review also recommends approval. Finally, Steve Ford from DEPS testified on behalf of the Ground Water Management, Storm Water Management, and Environmental Impact Review sections. He explained that there

were no unresolved comments from these sections and that they too recommend approval of the Plan. In sum, all County agencies recommended approval of the Plan.

DEVELOPER'S CASE

Mr. Vettori gave an overview of the case in which he explained that the MD 43 Overlay District was created in 1978, was amended in 2013 to allow residential development, and then amended again to include the subject parcel and others adjacent to Rte. 43 and Campbell Boulevard. He noted that the site could accommodate as many as 216 units but that they were proposing only 89 units.

The first witness called by Mr. Vettori was Robert Bendler. As noted above, he is the President of the Essex Middle River Civic Council, an umbrella group for twenty community associations in the vicinity of this proposed development. Mr. Bendler was effusive in his praise for the Developer, citing their responsiveness to the community's input. He testified that the community is very appreciative of the public park that the Developer will construct, and he explained that the community appreciates the lower housing density and quality of design detailed in the Plan and Pattern Book.

Next to testify was Neil Greenberg, the representative of Campbell Bird River, LLC, the property owner and developer. He explained that he has been involved in development projects in the County for many years. He explained the development proposal in detail, including modifications made in response to concerns raised at the Community Input Meeting and the Development Plan Conference. He recounted how the Developer had reached an agreement with the County whereby the Developer bought the land needed for the County to extend Campbell Boulevard from Pulaski Highway (Rte. 40) to White Marsh Boulevard (Rte. 43), which has since been completed. Campbell Boulevard bisects the subject site and the Plan depicts units on the

north and south sides of the road with points of access onto Campbell Boulevard. Mr. Greenberg further testified that he had agreed not to build townhouses on this site. He explained that the 89 proposed units will be of superior quality and that the layout of the development is based on best practices for the geometry of the site. He detailed the many meetings with the community groups and with the DOP, which negotiated many upgrades that are incorporated into the redlined Plan. He then described his role in crafting and negotiating Bill 53-20, which applies the MD 43 Overlay District to this and other parcels in the area. The Bill was admitted as Developer's Exhibit 3. He further detailed the Declaration of Annexation that the Developer entered into with Baltimore Crossroads @95, which brought this parcel within the purview of Bill 53-20. This Declaration was admitted as Developer's Exhibit 5.

The Developer's next witness was Aaron Kensinger, the engineer who prepared and sealed the Plan. He was accepted as an expert in engineering, land planning, and the County development law and regulations. He testified that he and others at Little & Associates began working on this project in April 2020. He identified the redlined Plan (Developer's Exhibit 1) and the redlined Pattern Book (Developer's Exhibit 2). He explained the Plan in great detail, including the fact that approximately 40% of the site will be protected by environmental easements. He specifically described the Schematic Landscape Plan, the Forest Buffer Variance, the Alternatives Analysis, and the Forest Conservation Variance that have been approved. These were admitted as Developer's Exhibits 17, 18, 19, 20, respectively. He also described the Storm Water Management facilities that are planned and identified the Concept SWM Approval, which was admitted as Developer's Exhibit 21. He further explained that the site is served by public water and sewer, and he detailed how connections to these utilities will be made. He then explained that this site has no Basic Services Map deficiencies, and he identified that Traffic Impact Study that was done and

accepted by the County. (Developer's Exhibit 23). He further noted that this site is classified as Transect T 3 in the 2020 Master Plan and that the proposed single family detached houses detailed in the Plan and Pattern Book are in harmony with the T 3 designation. He then explained the location and details of the public park that the Developer will construct and dedicate to the County. Mr. Kensinger then explained all the redlined changes, including the Modifications that had been approved by DOP under BCZR § 259.11.4.b. Finally, he testified that in his expert opinion the Plan, Pattern Book, and Modifications are fully compliant with BCZR § 502.1.

Mr. Vettori then moved to admit all of Developer's exhibits into evidence and the motion was granted.

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 well founded, unrebutted, and supported by the Exhibits admitted into the record.

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 "Spiegel Property shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **27th** day of **July, 2021**, that the "**Spiegel Property**" Plan marked and accepted into evidence as Developer's Exhibit 1, be and hereby is **APPROVED**.

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

PMM:dlm