

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE OFFICE OF
2609 – 2615 Caves Road		
3 rd Election District	*	ADMINISTRATIVE HEARINGS
2 nd Councilmanic District		
(2609 – 2615 CAVES ROAD)	*	FOR
2627, LLC	*	BALTIMORE COUNTY
<i>Owner / Developer</i>		
	*	HOH Case No. 03-0499

* * * * *

**ORDER ON REMAND FROM THE BOARD OF APPEALS
AND THE COURT OF SPECIAL APPEALS**

This matter comes before the Office of Administrative Hearings (“OAH”) on Remand from the Board of Appeals for Baltimore County pursuant to its Order dated June 28th, 2021. The Remand instructs this Administrative Law Judge (“ALJ”) to conduct “further proceedings consistent with the Court of Special Appeals’ opinion.”

BACKGROUND

This case involves a proposal to construct four dwellings on 24.18 acres of RC 5 zoned land near the intersection of Caves Road and Park Heights Avenue in Owings Mills. The land lies within the Caves Valley National Register Historic District (“the Historic District”) and the proposed dwellings are adjacent to the Stemmer House, a historic structure that is on the County’s Final Landmarks List, pursuant to Baltimore County Code (“BCC”) § 32-7-101(j), and which lies within a Historic Environmental Setting (“HES”), as defined by BCC § 32-7-101(p). The proposed homes, however, are not within the boundaries of the HES.

An earlier development plan proposing fourteen dwellings was denied in 2004. The instant proposal was approved by ALJ John Beverungen in 2016 after six days of public hearings. ALJ Beverungen rejected the Protestants’ argument that the 2015 plan was barred by *res judicata* based

on the 2004 ruling. The Board of Appeals affirmed ALJ Beverungen’s approval of the plan. The Circuit Court, however, reversed those lower court decisions finding that the 2004 decision did in fact bar the 2015 plan under the doctrine of *res judicata*. The Court of Special Appeals then reversed the Circuit Court, finding, among other things, that *res judicata* did not bar the 2015 development plan. The Court of Special Appeals did, however, find error in two of ALJ Beverungen’s rulings and therefore vacated his decision and remanded the case back to OAH for the resolution of these issues. In his legal memorandum counsel for the Developer aptly frames the remand issues from the Court of Special Appeals as follows:

1. Whether the proposed development has an unacceptable impact on the Caves Valley National Register Historic District?
2. Whether the proposed panhandle lots meet the requirements of BCC § 32-4-409?

As explained below, I answer both of these questions in the affirmative and therefore must approve the plan.¹

ANALYSIS

When Deputy Zoning Commissioner Murphy denied the 14 home development in 2004 he relied in part on BCC § 32-4-416, which specifically required him to consider the proposed plan’s impact on “historic structures or sites.” When ALJ Beverungen considered and approved the 4

¹ The Court of Special Appeals’ unreported opinion remanded the case to the OAH to consider the Historic District and panhandle lot issues. On this second issue the appellate court stated that “the ALJ . . . *may* hear additional evidence regarding this feature of the development plan.” CSA Opinion at 38. In correspondence to counsel I indicated that I would allow both sides to present such additional evidence on the panhandle issue but would confine my decision on the historical impact issue to the record made before ALJ Beverungen. On September 22, 2021 I held a hearing with the intent that the parties would submit additional testimony and/or evidence on this issue. However, after hearing a preliminary argument from Mr. McCann and rebuttal from Mr. Mudd I decided that it would be unfair to the Protestants to allow the Developer to supplement or “patch up” any holes associated with the panhandle issue after they had fully presented and then rested their case before ALJ Beverungen. I therefore asked counsel to submit legal memoranda on the two remand issues with citation to the record made before ALJ Beverungen. Counsel submitted lengthy and thoughtful memoranda on October 25, 2021.

home development in 2016 he noted that this provision of § 32-4-416 had been deleted as part of the passage of Bill No. 26-07. He therefore reasoned that he was not empowered to even consider the development's impacts on the Historic District. The Court of Special Appeals found error in this conclusion, reasoning that BCC §§ 32-4-102(b)(2)(vi) and 32-4-223(8) still require the ALJ to consider a development plan's impact on "historic sites or areas."² This Opinion will therefore consider both the historic impact issue and the panhandle lot issue in turn.

IMPACTS ON THE CAVES VALLEY NATIONAL REGISTER HISTORIC DISTRICT

It is well established that the OAH is a creature of statute and the ALJ's powers are statutorily constrained. The County Code 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. (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 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). As in any case, the relevant 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 laws and

² By letter dated October 29, 2021 Mr. Mudd urged that the CSA Remand Order restricts my review of the historic issue to the impact, if any, the proposed development will have on the National Register Historic District. He argues that the Remand is clear in this regard and that I am not at liberty to revisit the issue of the impacts, if any, on the Stemmer House and associated Historic Environmental Setting. On November 5, 2021 Mr. McCann filed a letter opposing that view and urging that the Remand Order was broad enough to permit these issues to be revisited. After closely reading the Remand Order and considering these arguments I find that Mr. Mudd's reading is correct. Moreover, even if I were to reconsider the impacts on the Stemmer House and the HES, I would agree with ALJ Beverungen's analysis and would therefore not deny the development plan based on those impacts.

regulations.

In the instant case, both the historic impact and the panhandle issue were extensively reviewed by the relevant county agencies – primarily the Department of Planning (“DOP”) – and all county agencies recommended approval of the plan. Further, the Developer did not rest solely on the recommendations of these agencies. Rather, the Developer adduced substantial additional expert testimony in support of the development plan.

A brief procedural review of the case before ALJ Beverungen is helpful here. Following five days of hearings ALJ Beverungen issued his Development Plan Opinion and Order in which he *denied* the plan for the sole reason that the DOP had not submitted “findings” concerning the plan’s conformance with the RC 5 standards, as required by Baltimore County Zoning Regulations (“BCZR”) § 1A04.4.C. He held that since this was mandatory the plan could not be approved. The Developer then filed a Motion for Reconsideration in which they requested that they be allowed to submit further evidence to the DOP so that the agency could make the required RC 5 performance standard findings. Over objection from the Protestants, ALJ Beverungen granted the Motion, finding that this was “a reasonable request, and is one that will allow for this matter to be resolved in a sensible and economical fashion, without the need for multiple appeals and a procedural morass.”

In accordance with the ALJ’s Order the Developer then compiled a 39 page 11” x 17” “Performance Standards Narrative” that they submitted to the DOP, with a copy to Protestants. These materials were then closely reviewed by Lloyd Moxley of the DOP, who was an experienced and respected Planner, and is now the head of the county’s development management section. Mr. Moxley made extensive notes concerning the Developer’s Narrative *vis a vis* the RC 5 standards.

On August 16, 2016 the ALJ then reconvened the development hearing to consider the RC

5 issue. The Developer's RC 5 "Narrative" was admitted as Developer's Exhibit 40. This document contains separate sections entitled: "Introduction / Vicinity Map," "Site Plan," "Landscape Plan," "Photos of Adjacent and Neighboring Dwellings," "Building Elevation Samples," "Site Cross Sections," and, "Narrative Summary." Mr. Moxley's detailed notes, spanning five single-spaced pages, were admitted as Protestant's Exhibit 75. At the hearing Mr. Moxley testified at length concerning each of the RC 5 issues, including the panhandle lots, and the development's impact on the surrounding Caves Valley area. On behalf of the DOP Mr. Moxley testified that the plan met the RC 5 performance standards and on behalf of the DOP he recommended approval. He identified Developer's Exhibit 42 as the DOP's Inter-Office Memorandum to ALJ Beverungen, in which the Director confirmed that the plan and Performance Standards Narrative comply with BCZR § 1A04.4.

The Protestants called Mr. Barton Ross, who the ALJ accepted as an expert architect, planner, and architectural historian. Mr. Ross was of the opinion that the RC 5 standards were not met and that "the mass and scale of the homes would be a 'huge blow' to the historic setting." And further, that the proposed dwellings are "wildly out of scale," and that they should be smaller, in "deference" to the Stemmer House." *See*, Amended Development Plan Opinion & Order at p. 3. ALJ Beverungen specifically noted that Mr. Ross "indicated the houses should be of a vernacular style, which would complement the Stemmer House and the historic setting". This testimony is significant in that the witness implicitly recognized dwellings could be constructed at the site without undermining the integrity of the district, provided they were designed properly. Other witnesses in Protestants' case at the original hearing argued no dwellings should be constructed." *Id.*

ALJ Beverungen summarized Mr. Moxley's testimony as follows: "I believe the DOP's

findings are supported by facts in the record and were (more than) adequately explained by Mr. Moxley. As such, I do not believe the agency abused its discretion. Furthermore, I believe the DOP's findings are supported by the "Performance Standards Narrative" (Dev. Ex. 40) which was submitted to the agency. Mr. Moxley's notes and testimony reveal the DOP considered each of the factors set forth in the performance standards by referencing the Narrative prepared by the Developer. Mr. Moxley provided clear and specific testimony concerning the site planning, landscaping, open space and design elements of the project, corresponding to the various sections of the standards and the narrative. I believe it can be said, without fear of contradiction, that no other residential project in Baltimore County has received such extensive scrutiny for design and site planning elements prior to the approval of a development plan." Based on the Developer's RC 5 Narrative and Mr. Moxley's notes and testimony ALJ Beverungen then approved the plan, as set forth in his Amended Opinion & Order.

In addition to reviewing ALJ Beverungen's Orders I have also reviewed the relevant portions of the hearing testimony concerning the Historic District issue, as well as numerous exhibits, including the Developer's RC 5 Narrative, and Mr. Moxley's notes. Based on my review of these materials I conclude, for the following reasons, that this four dwelling development will not impact the Caves Valley Historic District to an unacceptable degree under the County's development laws.

First, both sides agree that the designation of an area as a National Register Historic District does not in any way limit the owner's right to develop the property as long as no federal funding is associated with the project. 54 U.S.C. § 300101. To the contrary, experts on both sides agree that this designation is in the nature of a "planning tool," whatever that means. Nevertheless, as the Court of Special Appeals observed, BCC § 32-4-102(b)(2)(vi) provides, in relevant part, that

Title 4, the title covering development, “is intended to ensure . . . the protection of . . . historical sites and areas.” And further, that BCC § 32-4-223(8)(vi) requires all development plans to “*identify*” “a National Register Historic District covering the proposed development.” (emphasis added). However, as Developer notes in its memorandum, and as one of the Protestants, Elizabeth Watson, lamented in her testimony, the County Code and zoning regulations do not provide any “rules of the game” concerning *how* to protect historic sites or districts, or *how much* protection they should receive when balanced against a property owner’s rights. So the ALJ is left to rely on overarching land use principles and common sense, which of course can be dangerous in some cases.

I start, as I am required, by acknowledging that the representatives of all the County agencies testified that the plan in this case conforms to all County laws, and all recommended approval of the plan. These agency officials are “presumed to have properly performed their duties and to have acted regularly and in a lawful manner.” *People’s Counsel v. Elm Street Development, Inc., supra*, 172 Md. App. at 705. Further, “an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.” *Marzullo v. Kahl*, 366 Md. 158, 172 (2001). Thus, unless there is clear evidence to the contrary I am bound by BCC Sec. 32-4-229 to approve the plan. And it is not the ALJ’s role to gainsay the zoning or Master Plan classifications of a given property – that is the purview of the County Council. And in this case the zoning would allow greater than the proposed four dwelling density, and the site plan and Design Narrative conform with the “rural residential” Master Plan transect.

While counsel for Protestants makes eloquent arguments and points to lots of testimony and evidence, it is not enough, in my view, to undermine or rebut the agency determinations –

which were buttressed by the testimony and evidence submitted by the Developer. Beyond the presumption in favor of these agency recommendations, the most compelling reason for approving this four dwelling development is the fact that there has been other substantial recent development within the Caves Valley Historic District. In fact, the Caves Valley Golf Club and 38 associated luxury homes were built squarely within the District, as was the WCAO radio tower. The Protestants urge that these structures are somehow compatible with the Historic District but that the four homes proposed in this case – on the very fringe of the District - are somehow not. In their memorandum the Protestants ignore these incursions on the District and paint it as “a valley floor which contains agricultural fields, horse farms, and historic houses constructed by early settlers of the area.” Protestants’ Brief, p.4. Janet Davis, one of the Protestants’ experts, and the principal author of the nomination which led to the designation of this Historic District, explained at the hearing before ALJ Beverungen that there is a “cultural landscape” associated with the District, “which she described as a geographic area in which one can visually perceive the relationship and interaction between natural resources and the human built environment and understand how the area was shaped by the people who occupied the land over time.” Protestants’ Brief, p. 7. While these are beautiful words and concepts they cannot be squared with the reality on the valley floor, where sits a championship golf course surrounded by modern luxury homes.

The Protestants attempt to square their (grudging) acceptance of the golf course community with their opposition to this development plan by noting that the golf club agreed to place substantial acreage in permanent conservation easements. Protestants’ Brief, pps. 23-24. But Protestants ignore the fact that the development plan in this case preserves all but a few acres of forest, and will require the removal of only one specimen tree. In my view the four homes in this case, tucked away in the forest on the far fringe of the Historic District, will have far less impact

on the District than the golf course community. Further, Protestants continually point out in their brief that the experts on both sides in this case agree that the golf club community does *not* substantially impact the integrity of the Historic District. How that could be so is beyond me, but if that is true then these four additional homes on the fringe of the District should likewise not impact the District's integrity.

In addition, the Performance Standards Narrative (Developer's Exhibit 40), which I shall make a condition of approval, spells out numerous aspects of the plan that will protect the Historic District, including forest conservation, panhandle lots, the siting of the dwellings, extensive landscape screening, and the compatible architectural materials and designs.

Further, as ALJ Beverungen previously noted, Mr. Moxley and the Developer's experts testified at length about the plan's compliance with the RC 5 performance standards, and many of these standards implicitly serve to protect the Historic District. Mr. Moxley's notes (Protestants' Exhibit 75) include a thorough analysis of the many features of the plan that protect the Historic District. He explained as follows:

- a. Current BCZR regulation restricts new principal nonagricultural structures to 35' in height and not more than 15% of any lot may be covered by buildings. These requirements will ensure that the development proposals remain within the architectural parameters now existing in the area.
- b. No mass tree clearing is evident on the plan. The proposed dwelling sites for Lots 3 and 4 are at the edge of the existing woods resulting in minimal clearing. Lots 1 and 2 are located more fully into the trees. The limit of disturbance as scaled from the plan extends at most 50' from the dwelling foundations and although not shown on the plan, clearing of one third of the septic reserve area is typical. Significant quality registration is left on site. Access the new lots is via an existing drive therefore substantial tree removal for the purpose of access is not depicted on the plan.
- c. The development proposal is sensitive to the adjacent historic structure with its setting in that no disturbance will occur to the physical structures or grounds. All new construction is over 300' removed from the Stemmer House and in no instance will the proposed development obscure any view of it from the public

right of way.

- d. No mass grading is evident on the plan. Grading is limited to areas immediately adjacent to the proposed dwellings and along the existing access road necessary to meet public works standards. The development is behind and below the historic property but must remain higher than their respective septic reserve systems to facilitate a gravity feed. This places the proposal structures along a shoulder of the natural ridge within an elevation range of 520' to 550'. The structures themselves show a gradual grade transition reflecting the existent topography by setting first floor elevations of 547' (natural grade at 544' =3' difference), 558'(natural grade at 554' =4' difference), 557 (natural grade at 555' = 2' difference) and 536' (natural grade at 528' – 8' difference) for Lots 1,2,3 and 4 respectively.
- e. The transition between the proposed development and the surrounding rural area is successfully attained in that the proposed dwellings are sited such that viewing them from the public right of way will be difficult if not impossible. This is due to the 4 intervening trees and existing topographic conditions that are not proposed to be disturbed. Front building orientation as proposed is logical in that the amount of grading necessary to access the side load garages is minimized while the most formal and finished façade of the structures will be presented at those places when there may be seen from the historic structure.
- f. Each lot as proposed will exhibit varietal transitions in terms of the unique way the proposed dwelling occupies its wooded setting, the finished grades and varying setbacks and orientations of the dwellings. The natural grade is reflected in the proposed as-built condition in both the dwelling and the proposed drive. No retaining walls or other devices to manipulate grades are proposed.”

See, Moxley Notes (Protestants' Exhibit 75).

In addition, the Developer's experts also explained how the development plan lessens impacts on the Historic District. Ms. Kuranda, an architectural historian, testified at length about how this four home development will blend into the Historic District. She also prepared and submitted "Design Guidelines," that will ensure the development's compatibility with the District. *See*, Developer's Exhibit 28. Further, the Developer has agreed to record these Guidelines as restrictive covenants on the properties, which, together with the Performance Standards Narrative, will ensure that the Historic District is protected.

Mitch Kellman, a former county zoning official, testified that the site is classified in the 2020 Master Plan as a T2R “rural residential” transect, and that these four proposed dwellings are compatible with that designation, and with other residences in the District. The Developer’s landscape architect, Sally Malena, also testified at length about how the development plan limits impacts on the District. As counsel for the Developer explains:

“Ms. Malena explained how she prepared “sections” to demonstrate what someone viewing from Caves Road would see when looking toward Lot 1 and Lot 2 (2609 and 2611 Caves Road, respectively). See Owner’s Ex. 10 and 11. For Lot 1, she explained that, given the existing woods (which will remain preserved in a forest conservation easement, see Owner’s Ex. 11), the change in elevation, and the fact that the house would be approximately 650 feet away from Caves Road” [y]ou’re barely going to see it if you see it at all.” Nov. 5, 2015 T. at 234-35. For Lot 2, again with the grade change, the planned retention of trees, and the distance from Caves Road, “I don’t think you can see that house either. So I don’t see where it would be an impact visually from Caves Road.” Id. At 237-38. She even identified where, if necessary, additional screening could be installed in front of Lot 1 to further buffer it visually from Caves Road. See id., at 238; see also Owner’s Ex. 13. And, regarding Lots 3 and 4, she confirmed that they are both situated on the back side of a “ridge line” that runs through the Property, so you’re not going to see them” from Caves Road, and she did not even need to prepare a section to demonstrate that. See Nov. 5, 2015 T. at 232-33.

Developer’s Brief at pps. 11-12.

And, as counsel notes, Mr. Moxley’s analysis of these elements of the site plan buttressed Ms. Malena’s testimony. Based on all of this record evidence, and on the recommendations of all the county agencies, I find that this four dwelling development, when built to the standards of the Developer’s Narrative (Developer’s Exhibit 40), will protect the integrity of the Caves Valley Historic District.

THE PANHANDLE LOTS

The Court of Special Appeals found that ALJ Beverungen did not articulate a sufficient basis for approving the panhandle lots proposed on the plan. The court explained that “after the ALJ heard expert testimony that the proposed lots were not permitted by code, it was error for the

ALJ to approve the 2015 plan in the absence of evidence affirmatively demonstrating compliance with the applicable code requirements.” Remand Opinion at 38. As noted above, the court tasked the undersigned with conducting “further proceedings to ascertain whether the proposed panhandle lots would be in compliance with the applicable code requirements.” *Id.*

The expert in question was Bruce Doak, a property line surveyor who testified for the Protestants. He was accepted by ALJ Beverungen as having expertise in the Baltimore County zoning and development regulations. (March 24, 2016 Hearing Transcript, p. 10). Mr. Doak testified that when panhandle lots are proposed the property owner or developer’s representative normally submits to the DOP a concept site plan, a photo montage of the neighborhood, and a written narrative addressing how the plan complies with BCC § 32-4-409. Doak further testified that the developer’s representative then normally meets with the area Planner to discuss any modifications DOP requests, and then DOP gives their conditional approval of the panhandle lot design. Doak then stated that he did not believe any of those actions had occurred in this case, and that in his opinion the proposed panhandle lots did not meet the requirements of 32-4-409. (March 24, 2016 Hearing Transcript, pps. 16-26).

ALJ Beverungen explained that the Code does not actually require any of the actions that Doak described. He therefore found that Mr. Doak’s opinion should not prevail over Mr. Moxley’s testimony and recommendation of plan approval on behalf of the DOP. *See, Development Plan Approval & Order* at pps. 19-20. Counsel for the Developer correctly notes that “[i]f it was not clear from the original decision issued by the ALJ, there was substantial evidence in the record demonstrating the Owner’s compliance with the requirements for use of panhandle lots with this project, in addition to the testimony and recommendation of Planning.” Developer’s Brief at p. 15. Counsel then provides an excellent summary of the testimony and evidence supporting the use of

panhandle lots in this case, and why the plan complies with BCC § 32-4-409. Because I cannot improve on counsel's summary and analysis I quote it in full:

(i) The panhandle lots “achieve better use of irregularly shaped parcels.”

At the outset, the panhandle lots are proposed to be located on an existing parcel that is clearly irregularly-shaped, due to its orientation that effectively surrounds the adjacent parcel containing the historic Stemmer House.³ See Owner's Ex. 20A-C. Panhandle lots have been proposed here because they unquestionably provide for a “better use” of the irregular Property, to achieve a number of important results post-development:

- First, the panhandles will ensure that all development will occur outside of the historic environmental setting for the Stemmer House. The Development Plan identifies the location of this setting with a gray-dashed line, which has been highlighted in yellow on **Exhibit C**⁴ attached to this Memorandum. Ms. Kuranda even discussed the importance of this factor when she noted that “[t]he environmental setting is that conduit which is most appropriate to preserve [the Stemmer House].” Jan. 20, 2016 T. at 155-56. Keeping development out of that setting meant that no Landmarks Preservation Committee (“LPC”) review was required, and that the historic resource is necessarily better-protected by locating the homes outside of the setting. See id. at 130-41. Mr. Moxley likewise explained

³ The Protestants suggest the irregular, claw-like shape of the Property – which effectively surrounds the parcel on which the Stemmer House is situated – should be ignored, because this was somehow a “self-created” situation following a lot line adjustment performed prior to the filing of the Development Plan. The timing or cause of the lot creation, however, is irrelevant in the context of the application of § 32-4-409. There was exhaustive discussion about the prior lot line adjustment during the original hearing, and the ALJ properly determined that the Protestants had absolutely no right to revisit or to complain about that process in this case. See Nov. 5, 2015 T. at 75-78, 147-50. They participated in that proceeding, and they never appealed that decision; so they are left now to accept that determination and rely upon it, just as the ALJ is obligated to do. The ALJ must accept the facts as they exist now, which leaves an unusually shaped parcel that has been proposed for development in this case.

⁴ **Exhibit C** is simply Owner's Ex. 20A from the original hearing, with highlighting coordinated with the arguments made in this Memorandum, to enable the ALJ to more easily identify the information shown on the Plan.

how DOP determined that, if the Property were developed without a panhandle design, it would result in homes being situated closer to Caves Road, “and that would have an adverse impact not only to the experience of traveling along Caves Road...but it will also have an [] adverse impact on...the Stemmer House.” Aug. 16, 2016 T. at 29; see also id. at 19.

- Second, the panhandles facilitate placement of the new homes behind the Stemmer House, while nevertheless oriented toward it and adequately buffered and screened from it.⁵ This prevents development of homes situated between the Stemmer House and Caves Road, effectively in the front yard of the Stemmer House, which would detract from the existing views of the Stemmer House from Caves Road (and is at least part of the reason for the existence of the historic environmental setting around the Stemmer House). See Owner’s Ex. 20A-C. Ms. Kuranda also specifically noted that historic homes within the National Register Historic District (“NRHD”), like the Stemmer House “were cited for their [viewsheds]....That’s one of the reasons why I feel so strongly that...construction can be accomplished along a ridge line with the appropriate landscape buffer, because it is outside of that area.” See Jan. 20, 2016 T. at 163-64. Mr. Moxley’s testimony about the potential impact upon the Stemmer House likewise provides support here. See Aug. 16, 2016 T. at 29; see also id. at 19.
- Third, the panhandles facilitate the siting of the homes away from Caves Road, so as to eliminate/obscure, views of the proposed homes from the road. This is important in light of the alleged concerns of numerous Protestant witnesses who

⁵ It should be noted that even Judge Murphy in 2004 determined that placement of homes behind the Stemmer House provided appropriate protection from the historic nature of the house. See Prot. Ex. 10, p. 20.

testified about how seeing additional homes and light from Caves Road would somehow detract from the existing character of the road.⁶ Ms. Malena's testimony, highlighted above, clearly demonstrates how the location of the homes at the rear of the property virtually eliminates any chance of seeing them from Caves Road. See Memorandum p. 11-12. Ms. Kuranda's guidelines likewise stress the importance of installing additional landscaping where needed to maintain a visual buffer from Caves Road. See Owner's Ex. 28. Mr. Moxley's testimony, also outlined above, further drives these points home. See Memorandum p. 12, 16, 18.

- Fourth, the panhandles ensure placement of the homes near the easternmost edge of the Caves Valley NRHD. Ms. Kuranda explained that the proposed lots are “located on a very, the southeastern edge of the [NRHD] in an area that’s currently forested. The [NRHD nomination] documentation does not suggest that there’s any particular significance...I believe that construction can be undertaken in accordance with appropriate guidelines.” Jan. 20, 2016 T. at 150. Indeed, in placing these homes at the edge of the district, two of the homes are located on the back side of a ridge line, completely isolated from the remainder of the NRHD, which has been recognized as an important factor for mitigating/eliminating any potential impact to the District since at least 2004. See Exhibit A.
- Finally, the use of panhandles enables the Owner to keep the homes far removed from the vast gardens that are just west/south of the Stemmer House. There was much discussion throughout the hearing by Protestants’ witnesses regarding the

⁶ That premise of degrading the character of Caves Road, in and of itself, is really ridiculous, given the fact that numerous homes exist all along the frontage of Caves Road in each direction from the Property. See, e.g., Owner's Ex. 4, 16, 24, 40; Prot. Ex. 26. Regardless, the panhandles ensure that the homes would be placed as far away from Caves Road as possible,

gardens adjacent to the Stemmer House, which all parties indisputably desire to protect. For ease of reference, the gardens have been highlighted in orange on **Exhibit C**. The use of panhandles has absolutely enabled the Owner to avoid development within that garden area, which is something that all parties should support.

(ii) The panhandle lots “avoid development in environmentally sensitive areas.”

There was discussion throughout the hearing about a number of environmental resources onsite, including steep slopes (identified with green highlighter on **Exhibit C**), specimen trees (identified with pink highlighter on **Exhibit C**), a stream buffer and an isolated pond (identified with blue highlighter on **Exhibit C**), and the historic environmental setting across much of the western portion of the Property (west of the yellow highlighted line on **Exhibit C**)⁷. Upon review of **Exhibit C**, it is clear that the use of panhandles facilitates avoidance of these resources, because it enables the homes to be constructed upon and behind the ridge line out of the way of virtually all of the resources.⁸ In his testimony, Mr. Doug Kennedy described the existing conditions of the site, including the stream and associated buffer, the grades/slopes, and the historic environmental setting, all of which he considered as “constraints” that dictated the site layout. See Nov. 5, 2015 T. at 110-22. Mr. Henry Leskinen, an expert ecologist and environmental scientist, explained about his involvement with the subject property since 2004, and he noted that the development as proposed would avoid any clearance of “priority one forest⁹” (except for the single specimen tree

⁷ The historic environmental setting should be considered an “environmental resource” in the context of the Development Regulations, given the fact that the policy previously cited by the Protestants to support their NRHD argument includes “historical sites and areas” among the “environmental resources” that are deserving of protection. See BCC § 32-4-102(b)(vi).

⁸ The Owner previously obtained approval for removal of a single specimen tree to facilitate the shared driveway improvements. That decision was not appealed and is final. That represents one single specimen that is to be removed, while the panhandle layout will ensure the preservation of 27 others.

⁹ This is “forest that occurs in environmentally sensitive areas such as forest buffers, flood planes [sic], wetlands, encompasses steep slopes. They have high structural diversity, may be habitat for rare or endangered species, and

to be removed¹⁰), as well as any disturbance on steep slopes. Id. at 190-92. Additionally, Mr. Moxley recognized that the homes are “located outside of the protected areas, and that is facilitated by the use of a panhandle...option,” which was among the factors that Planning relied-upon when getting comfortable with the panhandle layout. See Aug. 16, 2016 T. at 29.

(ii) The lots “will not be detrimental to adjacent properties.”

The most proximate adjacent property is the parcel on which the Stemmer House is situated, and this Memorandum previously describes in detail how the development of the Property utilizing panhandles, to facilitate house construction behind the Stemmer House and outside of its historic environmental setting, is most respectful to the Stemmer House parcel. See Memorandum p. 18-19. The evidence also demonstrates how the panhandle layout ensures the proposed homes will be the least intrusive from Caves Road and any properties situated across Caves Road from the Property, including the fact that two of the four homes will be on the opposite side of a ridge on the Property and not even be possible to be seen from that direction. See id. p. 13, 18-19. The layout likewise keeps new homes very far away from the southern boundary of the property, where the existing gardens are proposed to be preserved and where a 5+ acre forest buffer will be perpetually preserved. See Owner’s Ex. 20A. To the north, the panhandle layout places the home on Lot 1 approximately 500 feet to the closest offsite home (other than the Stemmer House), which is situated through thick woodlands. The home on Lot 1 will also be situated to the rear of that existing home; a layout that would push homes closer to Caves Road would not only involve the clearing of more woodlands, but it would also move homes into the side and/or front yard setting

that’s priority one forest.” Nov. 5, 2015 T. at 207. There are 5.5 acres of “priority one forest” onsite that will not be cleared and will be preserved perpetually through the approval of the Development Plan. Id. at 209

¹⁰ He also specifically noted that, “by removing one specimen tree we’re protecting more, we’re maintaining more forest,” because alternative access opportunities would result in the removal of more trees in general. Nov. 5, 2015 T. at 197-99.

of the adjacent home. To the east, the proposed homes will respect all setbacks, and the existing home on that property is centered on the property, far away from the boundary line and otherwise surrounded by thick woods. See Owner’s Ex. 4. It is also important to note that the Velvet Valley/Velvet Ridge Neighborhood Association – which is the neighborhood situated due south of Lot 4 (along Velvet Ridge Drive) and the closest neighborhood to the Property – submitted a letter of support for the proposed Development Plan, which specifically states that the development “does not adversely affect any of the six adjacent properties or their respective owners within the VV/VR Neighborhood.” Owner’s Ex. 14.

(iii) The lots “will not conflict with efforts to provide for public safety and general welfare.”

Many of the justifications already provided – related to preserving the environment and historic resources and protecting surrounding properties from the potential impacts of development – likewise apply to this prong. Additionally, all four lots will utilize a single existing driveway that will minimize new impervious area needed to serve four lots on the Property. See Owner’s Ex. 20A. Further, as confirmed by Messrs. Kennedy, Leskinen, and Moxley, the driveway will be modernized and has been determined by Department of Public Works & Transportation (“DPW&T”), the Fire Marshall, and DOP to be safe and adequate, including appropriate locations for trash and mail pickup. See Nov. 5, 2015 T. at 15-20 (testimony of Dennis Kennedy regarding DPWT and fire department approval); id. at 112-14 (testimony of Doug Kennedy regarding driveway); id. at 181-82 (testimony of Mr. Leskinen regarding driveway and agency approvals); Aug. 16, 2016 T. at 26-30, 46 (testimony of Mr. Moxley confirming that the panhandle lot and driveway design is compliant with County law and that the Chestnut Ridge Fire Company confirmed access via the proposed driveway). This proposal is certainly deemed

preferable to those agencies, when compared to potentially having multiple homes with multiple different driveways along Caves Road, all in close proximity to one another. See Testimony of Messrs. Kennedy, Kennedy, Leskinen, and Moxley.

See, Developer's Brief at pps. 18-23.

In my view, this record evidence conclusively establishes that the four panhandle lots in this case are in full compliance with BCC § 32-4-409 and with the Comprehensive Manual of Development Policies. I further believe that the use of panhandle lots for this development dovetails with the goal of protecting the Caves Valley Historic District.

CONCLUSION

In sum, I find that the agency recommendations of approval, coupled with the substantial testimony and exhibits submitted by the Developer, compel approval of the plan. I believe that the Performance Standards Narrative, the Design Guidelines covenants, and the other conditions I shall impose will ensure that the Historic District will be protected.

The Valleys Planning Council and other such organizations and individuals have played a vital role in preserving the beauty and rural character of so much of northern Baltimore County. As a result of their vigilance and diligence Baltimore County is regarded as one of the national leaders in land preservation. I therefore do not lightly approve this development in the face of their opposition. However, as explained above, the plan conforms with the Master Plan and with the RC 5 performance standards and I do not believe that the legislative intent of BCC § 32-4-102(b)(2)(vi) to "protect" historic areas and sites precludes this four dwelling development. The owner/developer has property rights that must also be considered. And the low density, high quality development that is proposed does in my view protect the Historic District to the extent envisioned by the County Council when considered in light of the entire zoning and development

law.

THEREFORE, IT IS ORDERED this 17th day of **November, 2021** by this Administrative Law Judge, that the “**2609 – 2615 Caves Road**” red and blue lined Development Plan, marked and accepted into evidence as Developer’s Exhibit 1A-1C and 20A-20C, be and hereby is **APPROVED.**

The relief granted herein shall be subject to the following:

1. The Developer’s Performance Standards Narrative (Developer’s Exhibit 40) and Design Guidelines (Developer’s Exhibit 28) are hereby incorporated into this Order, and all development and construction at the site shall fully comply with those documents.
2. The walls of the driveway leading to the panhandle lots shall be faced/clad with either traditional red brick or fieldstone so as to be compatible with the Caves Valley Historic District, and the Stemmer House and associated Historic Setting.
3. Apart from the four dwellings depicted on the site plan no further subdivision or development shall be permitted on this 24.18 acre site, and provisions restricting future development of the subject lots shall be incorporated in the deeds for these four lots.
4. Petitioner shall file copies of the above-described deeds with the Zoning Office and those deeds shall also incorporate an express reference to this Order.

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

PMM:dlw

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