**IN RE: DEVELOPMENT PLAN HEARING**  \* BEFORE THE OFFICE OF

(Old Court Road)

3rd Election District \* ADMINISTRATIVE HEARINGS

2ndCouncilDistrict

**(THE COURTS OF**  \* FOR

**HIDDEN WATERS)**

Willard Hackerman, *Owner*  **\*** BALTIMORE COUNTY

Bozzuto Homes, Inc., *Developer*

\* **HOH Case No. 03-0517**

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# **ADMINISTRATIVE LAW JUDGE’S (“ALJ”)**

# **DEVELOPMENT PLAN OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County for a public hearing on a development proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code (“BCC”). David Gildea, Esquire, on behalf of Willard Hackerman, *Owner*, and Bozzuto Homes, Inc., *Developer* (hereinafter “the Developer”), submitted for approval a five-sheet redlined Development Plan (“Plan”) prepared by Morris & Ritchie Associates, Inc., known as “The Courts of Hidden Waters”.

The Developer proposes 24 single-family detached dwellings on 24.40 acres, more or less, of DR 1 zoned land, situated on Old Court Road, which is a Baltimore County designated scenic route. There are currently no improvements on the site.

Details of the proposed development are more fully depicted on the five-sheet redlined Plan that was marked and accepted into evidence as Developer’s Exhibit 1. The property was posted on October 9, 2018 with the Notice of Hearing Officer’s Hearing (“HOH”) for the November 8, 2018 hearing, in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland, in compliance with the regulations.

In attendance at the HOH in support of the Plan was Jennifer Langford, Thomas Sheckells, Nicole Reedy, Eric Chodnicki, Zack Wilkins, Carl Wilson, and Joshua T. Sharon, professional engineer, with Morris & Ritchie Associates, Inc., the consulting firm that prepared the site plan. David K. Gildea, Esquire appeared and represented the Developer.

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”): Patrick B. Williams, Project Manager, Vishnu Desai, Jim Hermann, (Development Plans Review [“DPR”]), LaChelle Imwiko, Real Estate Compliance, and Aaron Tsui (“Zoning Review”). Also appearing on behalf of the County were Steve Ford from the Department of Environmental Protection and Sustainability (“DEPS”), and Jessie A. Bialek from the Department of Planning (“DOP”). Several citizens attended the hearing to obtain additional information regarding the project and Dino La Fiandra, Esq. appeared on behalf of Beth Tfiloh to raise a concern regarding sidewalks along Old Court Road, an issue discussed below.

Each of the Baltimore County agency representatives identified above indicated that the Development Plan addressed any comments submitted by their agency, and they each recommended approval of the Plan. Jessie A. Bialek presented a School Impact Analysis (“SIA”) [Baltimore County Exhibit 1] demonstrating the Developer can comply with State-mandated requirements concerning the maximum number of students permitted to attend the elementary, middle and high school in the vicinity of the project. Jessie A. Bialek also noted the DOP approved a pattern book (Developer’s Exhibit 2) for this project which provides elevations and architectural details for the single family lots and other amenities to be located on the site. Mr. Hermann testified a schematic landscape plan (Baltimore County Exhibit 2) was approved on November 7, 2018 and that Developer was providing on site more than the amount of open space required by the regulations.

In its case in chief, the Developer presented two (2) witnesses: Jennifer Langford, on behalf of Developer, and Joshua T. Sharon, professional engineer with Morris & Ritchie Associates, Inc., accepted as an expert.

Ms. Langford, a Bozzuto Homes representative, described in detail the history of the site, including how the Hackerman family preserved with a Maryland Environmental Trust easement the bulk of the tract and reserved an approximately 24.4 acre parcel for future development. Ms. Langford indicated Bozzuto met on several occasions with the surrounding community, and revised the Plan significantly to accommodate community and County concerns. The witness described the layout of the proposed development and provided a sample elevation of a potential single family dwelling, although she stressed Bozzuto does not develop “cookie cutter” projects and tries to design the homes to reflect and incorporate elements found in nearby architecture.

Mr. Sharon discussed the project in general and described in detail the improvements planned for the site. He described in detail the roadway network, stormwater facilities and sanitary sewer planned for the development. Mr. Sharon opined Developer satisfied all Baltimore County codes and regulations.

Community Concerns

In terms of the project itself, the community indicated it supports the Plan and is grateful to Bozzuto Homes for its outreach efforts. The sole issue on which there was disagreement concerned sidewalks along Old Court Road, a State highway and Baltimore County scenic route.

A sidewalk along the Old Court Road frontage was shown on the April 2018 concept plan for this project. In reviewing that plan, the State Highway Administration (“SHA”) issued a comment indicating the sidewalk and curb needed to be constructed in compliance with State regulations. But at roughly the same time, the DOP indicated in its comments that it did not want a sidewalk in that location. It requested the Developer to instead increase the setbacks between Old Court Road and the proposed dwellings and install in that area a berm 6 to 8 ft. in height with landscaping to screen the view of the homes from the scenic route. Members of the community also testified at the hearing they did not want a sidewalk along Old Court Road.

In response to those comments, the Developer revised the plan and a sidewalk is not shown on the Development Plan. Representatives of Beth Tfiloh (Eve Steinberg and Rabbi Chai Posner) testified they believed a sidewalk was necessary as a safety precaution to accommodate those members of the congregation (which they estimated at 10%) that walk to services as a religious obligation. Mr. La Fiandra presented a portion of the Greenspring-East Pikesville Community Action Plan (which is incorporated into the Master Plan) which cites the need for accommodating cyclists and pedestrians along scenic routes. In addition, that plan also notes that sidewalks and other improvements should be considered to assist religious families in the area, many of which rely on pedestrian travel.

As indicated at the hearing, I do not believe the ALJ is authorized to mandate improvements along a State highway. In addition, the Developer has incurred significant costs to revise the Plan in accordance with DOP comments and community concerns. As such, I think mandating a redesign of the project at this juncture would be inequitable. I am also persuaded by the testimony of Phyllis Friedman and Nevill Jacobs, both longtime residents in the community.

Ms. Friedman noted a sidewalk along the north side of Old Court Road would interfere with combines and other agricultural vehicles which routinely access the site, which is actively farmed. Mr. Jacobs testified there is a ditch along the roadway on the north side of Old Court Road which would make it difficult to locate a sidewalk in that area. Witnesses noted the SHA has an easement along the south side of Old Court Road in this area, and Mr. Jacobs stated a sidewalk or walking path – if one is to be added – should be constructed on that side of the road.

Based on this testimony and the legal issue identified at the outset, I will not include in the order a condition requiring a sidewalk along the Old Court Road frontage of this project.

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. 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 Development Plan.

Pursuant to the advertisement, posting of the property, and public hearing held thereon, the requirements of which are contained in Article 32, Title 4, of the BCC, the “The Courts of Hidden Waters” Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **9th** day of **November, 2018**, that the **“THE COURTS OF HIDDEN WATERS”** redlined Development Plan in Case No. 03-0517, marked and accepted into evidence as Developer’s Exhibit 1, be and is hereby GRANTED.

Any appeal of this Order shall be taken in accordance with BCC, §§ 32-3-401 and 32-4-281.

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Administrative Law Judge

for Baltimore County

JEB/dlw