

IN THE MATTER OF  
L'HIRONDELLE CLUB OF RUXTON  
7611 L'Hirondelle Club Road  
Towson, Maryland 21204

Re: Appeal of forest buffer variance, forest  
conservation easement, and stormwater  
management variance.

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case Nos.: CBA-24-009  
CBA-24-010  
\* CBA-24-013

\* \* \* \* \*

**OPINION**

This case comes before the Baltimore County Board of Appeals on three direct appeals related to L'Hirondelle Club of Ruxton ("the Club"), 7611 L'Hirondelle Club Road, Ruxton, Maryland 21204 ("subject property" or "the property"). The Petitioner was represented by Christopher D. Mudd, Esquire of Venable LLP. The Protestants/Appellants are individuals who live in closely proximate to the Club on L'Hirondelle Club Road. They were represented by Michael R. McCann, Esquire.

Case No. CBA-24-009 is an appeal from a letter dated September 18, 2023, from the Department of Environmental Protection and Sustainability ("DEPS") granting a forest buffer variance request for the subject property. Case No. CBA-24-010 is an appeal from a DEPS letter of August 11, 2023, granting a forest conservation easement. Case No. CBA-24-013 is an appeal from a DEPS letter dated September 25, 2023, granting a stormwater management variance. The Club filed a motion to dismiss Case No. CBA-24-010 as untimely, and the Appellants voluntarily withdrew that appeal. Accordingly, only the question of the forest buffer variance and the stormwater management variance were before the Board. The review by the Board is *de novo*.

The Board held an in-person hearing on February 28, 2024. Subsequently, Counsel for the parties submitted Memoranda. The Board held a public deliberation on April 16, 2024. In that deliberation the Board ruled that the forest buffer variance and the stormwater management variance were valid and proper.

### **INTRODUCTION**

Pursuant to the Baltimore County Code (BCC) § 33-3-106(a)(1) the Board may grant a forest buffer variance “[f]or those projects or activities where strict compliance with the requirements of this title would result in practical difficulty or unreasonable hardship.” Similarly, BCC § 33-4-113(a) authorizes the Board to grant a stormwater management variance “. . .if there are exceptional circumstances applicable to the site.” The Section further states that “[e]xceptional circumstances must be such that strict adherence to the provisions of this title or design standards would result in unreasonable hardship or practical difficulty and not fulfill the intent of this title.” At its public deliberation, the Board determined that both of these standards had been met.

### **FACTUAL PRESENTATION**

The property at issue is a well-known Baltimore County country club which first opened in 1872. It covers approximately 8.7 acres. The Club has a clubhouse, swimming pool, fifteen tennis courts, seven paddle ball courts, and a number of outbuildings. (Club Exhibit “CE” 2) Recently, the membership indicated a strong interest in having pickleball availability. The level of membership interest warranted 8-10 pickleball courts. Accordingly, the Club retained the consulting firm of Daft, McCune, and Walker (“DMW”) to determine the feasibility of reconfiguring the existing site to include pickleball courts.

Petitioner's first witness was Eric Hadaway, Vice President of Environmental Services at DMW. Mr. Hadaway was accepted without objection as an expert in natural resources and environmental compliance consulting. It was acknowledged that he had expertise in the requirements for forest buffers and stormwater management. (CE 1)

**1. Forest Buffer Variance**

Mr. Hadaway indicated that DMW determined that the only way to fit any meaningful number of pickleball courts onto the existing property was to eliminate one tennis court on the southwest corner of the property. The proposed site – which included the pre-existing tennis court as well as a shed and a small grassy area – were within a forest buffer that was generated by reason of the floodplain associated with Roland Run. Accordingly, DMW was required to design a project that would yield a reasonable number of pickleball courts while improving the buffer conditions.

Given the conditions, DMW designed the project so as to have five pickleball courts and reduce the impact to the buffer by using part of the existing tennis area and a portion where a shed was located, along with removing other impervious areas and a gravel parking lot. (CE 4, 6 and 7). This improved the buffer by removing impervious areas that were closer to Roland Run, by locating the improvements further away from Roland Run, by planting trees in what had been the gravel parking lot, and by placing that latter portion in a permanent forest buffer. According to Mr. Hadaway, the proposed design provided the minimum number of pickleball courts necessary to make the project worthwhile while improving the overall condition of the property within the buffer. Accordingly, DMW filed a request pursuant to BCC § 33-3-106 for a forest buffer variance with DEPS, which DEPS approved in its letter of September 18, 2023. (CE 4,

5 and 8).

The Club also called Michael Kulis, who is a Natural Resources Inspector for Baltimore County with 31 years of experience. Mr. Kulis was primarily responsible for investigating the circumstances surrounding the request for the Forest Buffer variance. Since 2005, Mr. Kulis' duties have included responsibility for projects within the Jones Falls and Gunpowder River watersheds. He reviews the scope and propriety of projects within those watersheds and determines whether the proposed projects comply with the relevant laws and regulations. Mr. Kulis visited the subject property as a result of the application for a Forest Buffer variance. He concluded, as had Mr. Hadaway, that the Club's proposal leads to improved conditions within and around the forest buffer. He determined that all of the criteria were met for such a buffer, and he actually drafted CE 8 which was the approval letter for the forest buffer variance in this matter.

## **2. Stormwater Management Variance**

As to the stormwater management variance, Mr. Hadaway testified that the project as designed did generate the need to address approximately 431 cubic feet of stormwater volume even though the total amount of impervious surface was reduced. Accordingly, DMW also requested a stormwater variance pursuant to BCC § 33-4-113. As described in more detail *infra* at p.8-9, Mr. Hardaway indicated that it was essentially impossible to comply with the stormwater management requirements. It was not possible to provide the required outfall because of the flat topography and the proximity to the City property line. Because the Club did not have permission from the City to locate outfall on City property, there was, according to Mr. Hadaway, no feasible way to provide for stormwater outfall on the site. Consequently, DMW requested that the Club be permitted to pay a fee in lieu of compliance. A procedure that is not uncommon

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where compliance is impractical or causes hardship and where strict compliance with the law is not necessary.

The Club called, along with Mr. Hadaway, Charu Malhotra. Ms. Malhotra is in the DEPS Stormwater Management Review Section. She is a licensed professional engineer in Maryland with over twenty years' experience. She has been with DEPS for three years. She indicated that the reduction in impervious surface helped avoid any adverse effects from the project downstream. She noted that this was a rather small project from a SWM perspective. She agreed with Mr. Hardaway's earlier testimony that there was a practical difficulty in complying with the strict letter of the BCC because the topography and property boundaries made it impossible to have a suitable outfall onsite. DEPS granted this variance in its letter of September 25, 2023. (CE 10).

The Protestants called one witness, Owen Knott, who lives on L'Hirondelle Road. He along with a number of other L'Hirondelle Road residents (almost all of whom are members of the Club) are opposed to the inclusion of pickleball courts at the site proposed by DWM primarily because of the noise generated by pickleball. They wanted the pickleball courts located as far away as possible from the L'Hirondelle Road residences. Mr. Knott described a lengthy negotiation process between the Club management and those who opposed this project. He also testified, over the Club's objections, to findings regarding noise levels and the ways in which pickleball noise could be abated.<sup>1</sup> He expressed deep frustration with the Club management and

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<sup>1</sup> The Board accepted this testimony but ultimately determined, as articulated at the public deliberation, that the question of noise was not relevant to resolution of either the forest buffer variance or the stormwater management variance. The nearby residents are understandably concerned about the prospect of noise. The Board has no authority to impose any limitations to address that issue. Nonetheless the Board does suggest that in the interests of neighborhood and membership harmony, the Club take all necessary steps to ameliorate the noise.

suggested that management did not negotiate in good faith either as to the location of the project and the noise question. The Protestants did not provide any expert testimony as to the forest buffer variance or the stormwater management variance.<sup>2</sup>

### **FOREST BUFFER VARIANCE**

The first item of requested relief is a forest buffer variance. A forest buffer is defined by statute as “a wooded area that exists or is established to protect a stream system.” Baltimore County Code (BCC) § 33-3-101(h). Section 33-3-106 gives the Director of DEPS the authority to grant a variance for projects “. . . where strict compliance with the requirements of this title would result in practical difficulty or unreasonable hardship.” The Director’s decision is appealable to the Board which decides the case *de novo*.

In this instance, the proposal calls for some development in the already established forest buffer generated by the Roland Run, a stream running along the southwestern edge of the subject property. Accordingly, DWM ultimately designed the project with only five pickleball courts, the minimum number needed to meet the goals of the Club membership and significantly fewer than originally proposed. This request actually improved the impact to the forest buffer. This was accomplished by incorporating an existing tennis court (that itself was impervious) but then removing other impervious surfaces in the area, such as a gravel parking lot. The modifications also shifted the impervious surfaces further away from Roland Run. In addition, the project called

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<sup>2</sup> A party does not concede the validity of expert testimony by not calling an expert to expressly rebut the expert opinions at issue. It can rely on cross examination or other circumstances to undermine the validity of the expert testimony. *Edsall v. Huffaker*, 159 Md. 337, 343 (2004) (litigant not required to present an expert to counter opponent’s expert and can rely on other factors to undermine expert’s opinion); *Walker v. Grow*, 170 Md. App. 255, 275-76 (2006) (trier of fact free to accept or reject an expert’s testimony in whole or in part even if no contrary expert is called). In this instance, however, the Board found Mr. Hadaway to be quite credible and convincing. Although not presented as experts, Mr. Kulis and Ms. Malhotra concurred with Mr. Hadaway, and their own professional judgment supported Mr. Hadaway’s conclusions.

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for the planting of trees within the area presently used as the gravel parking lot and placing that area in a perpetual forest buffer easement. The final result was a project that was smaller than originally intended but which improved the subject property's conditions within the forest buffer.

This more compact and creative proposal is what the Club submitted to DEPS and what was approved in substance by the Director. Mr. Hadaway, a highly credentialed and convincing witness, testified that the newly configured project satisfied the statutory criteria for the granting of a forest buffer variance for a number of reasons. First, the proposal reduces the impacts within the buffer by eliminating 900 square feet of impervious surface than presently exists within the buffer. It also calls for the removal of a shed used to store landscaping chemicals and petroleum products. Secondly, there is significant improvement to the forest buffer by removing the gravel parking area and replacing it with a large, wooded area. Thirdly, Mr. Hadaway testified that shifting the overall focus of the forest buffer away from the Roland Run reduced any impact to the stream.

Mr. Hadaway also testified that strict compliance with the requirements of this title would result in practical difficulty or unreasonable hardship. The Club had been in existence since 1872. The tennis court that was within the forest buffer and which was to be removed in favor of the pickleball project, had been developed well before the advent of any of the present environmental regulations. The Club is approximately 150 years old. Given the longstanding operation of the Club, its growing membership, and the changing needs of the membership, it would be impossible for the Club to expand or reconfigure to meet the needs of its membership.

Mr. Hadaway testified that, as a result, the final Club proposal satisfied the unreasonable hardship and practical difficulty requirements of BCC § 33-3-106. Though Mr. Hadaway did not

testify to any economic issues, the Board notes that a Club of this sort needs to constantly upgrade and modify itself in order to maintain its membership, which is essential to the continued economic viability of the Club. This need for modernization speaks directly to the question of unreasonable hardship and practical difficulty.

Mr. Kulis testified that he had reviewed the Club's proposal and prepared the DEPS letter approving the variance. He stated that he had heard Mr. Hadaway's testimony and agreed with it in its entirety. He had visited the site, he had reviewed the proposal closely, and he concluded that all of the statutory requirements were met. It was for these reasons that he prepared the Director's letter, and the Director signed.

Based on the testimony of Mr. Hadaway and Mr. Kulis, the Board finds that the forest buffer variance does meet the requirements of BCC § 33-3-106, and approves the proposal as submitted to and approved by DEPS.

#### **STORMWATER MANAGEMENT VARIANCE**

The Board can grant a stormwater management variance “. . . if there are exceptional circumstances applicable to the site” and if the exceptional circumstances are “. . . such that strict adherence to the provisions of this title or design standards would result in unreasonable hardship or practical difficulty and not fulfill the intent of this title.” BCC § 33-4-113.

Mr. Hadaway testified that the amount of stormwater that was required to be managed in this instance was about 431 cubic feet, a small area which Mr. Hadaway said was much like a 20 x 20 pool that was one foot deep. This is a small amount of stormwater. After giving a lengthy explanation as to how Environmental Site Design (“ESD”) measures can filter stormwater, Mr. Hadaway went on to say that there was no way that any ESD measures could adequately address



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even the small amount of stormwater at issue here. The two impediments were the proximity to the Baltimore City property line and the generally flat topography of the project site. In order for there to provide outfall, the City would have to give its permission, which it had not done. Moreover, even if the City had consented, the outfall would be close to the Roland Run resource, which was not desirable. Accordingly, Mr. Hadaway proposed that the Club pay a fee in lieu of compliance with BCC § 33-4-113. A “fee in lieu” is not an uncommon practice, and the County has a pre-determined rate of \$54,000.00 per acre of onsite impervious surface. Because of the small amount of impervious area – particularly given that the forest buffer conservation component was reducing the impervious area – the total amount to be paid was \$6,743.00.

Mr. Hadaway testified that the “fee in lieu” satisfied the Code requirements of unreasonable hardship or practical difficulty because even though the stormwater itself was not great, the entire project would have to be scrapped if the Club were required to comply strictly with the stormwater requirements.

As indicated above, Charu Malhota agreed with Mr. Hadaway. She testified that she had worked closely with MDW and Mr. Hadaway. She concurred that the amount of stormwater was small and that no ESD outfall could be constructed. She agreed that this was precisely the type of project where a “fee in lieu” was appropriate because the stormwater amount was quite small, and the apparently beneficial project would not be able to move forward if strict compliance were required.

The Board concluded that requiring strict compliance with the stormwater requirements would create an unreasonable hardship or practical difficulty such that the “fee in lieu” was appropriate. The project was not simply some pretty accoutrement to the operation of the Club:

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it was necessary to meet the desires of the membership and hence the continued successful operation of the Club as a stable racquet sport facility – which it has been for generations. The stormwater requirements are not meant to stifle all beneficial changes to a property. In this instance the Board finds that the circumstances are exceptional and that strict adherence to the stormwater management requirements would create an unreasonable hardship or practical difficulty. Under all of the circumstances, a “fee-in lieu” is a reasonable accommodation between the needs of community and the environmental concerns sought to be addressed by the stormwater control constraints.

**CONCLUSION**

For the reasons stated herein, the Board grants the forest buffer variance as reflected in the letter dated September 18, 2023, from DEPS granting a forest buffer variance, and the Board grants the stormwater management variance as reflected in the letter from DEPS dated September 25, 2023, granting the stormwater management variance. The Board grants each of the variances because it has found by a preponderance of the evidence that each variance is warranted and meets the applicable statutory conditions. In addition, the Board incorporates the terms, conditions, and restrictions recited in each DEPS letter as if those terms, conditions, and restrictions were expressly recited herein.

**ORDER**

**THEREFORE**, it is this 24th day of July, 2024, by the Board of Appeals for Baltimore County

**ORDERED**, that the forest buffer variance request in Case No. CBA-24-009 as reflected in the letter dated September 18, 2023, from Director of the Department of Environmental

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Protection and Sustainability (DEPS) is hereby **APPROVED** with all of the terms, requirements, and conditions recited in that letter incorporated herein; and it is further

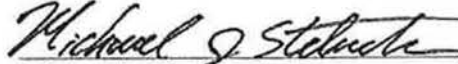
**ORDERED**, that the appeal taken in the forest conservation variance request in Case No. CBA-24-010 be and the same is hereby **DISMISSED**; and it is further

**ORDERED**, that the stormwater management variance in Case No. CBA-24-013 as reflected in the letter dated September 25, 2023, from the Department of Environmental Protection and Sustainability (DEPS) is hereby **APPROVED** with all of the terms, requirements, and conditions recited in that letter incorporated herein; and

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules.

**BOARD OF APPEALS FOR  
BALTIMORE COUNTY**

  
\_\_\_\_\_  
Joseph L. Evans, Chair

  
\_\_\_\_\_  
Michael J. Stelmack

  
\_\_\_\_\_  
William H. Paulshock, Sr.



Board of Appeals of Baltimore County

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July 24, 2024

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RE: *In the Matter of: L'Hirondelle Club of Ruxton*  
Case Nos.: CBA-24-009, CBA-24-010 and CBA-24-013

Dear Counsel:

Enclosed please find a copy of the final Opinion issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sunny Cannington".

Krysundra "Sunny" Cannington  
Executive Secretary

KLC/taz  
Enclosure  
Duplicate Original Cover Letter

c: See Distribution List Following

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