

IN THE MATTER OF:
ENTERPRISE COMMUNITY
DEVELOPMENT, INC., OWNER
AND DEVELOPER
7500 PHILADELPHIA ROAD
(RIDGEDALE PUD)
PAI #: 14-0453

14TH ELECTION DISTRICT
6TH COUNCIL DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-24-032

* * * * *

OPINION

This case comes before the Board of Appeals of Baltimore County as a record appeal of the Administrative Law Judge’s Opinion and Order dated May 2, 2024, approving a Planned Unit Development ("PUD") for property located at 7500 Philadelphia Road. The property is owned by Enterprise Community Development, Inc. ("Enterprise"). This proposed development is also known as the "Ridgedale PUD". The PUD proposes 40 single family attached townhomes and an 80-unit multi-family building for independent senior living on 9.108 acres +/- of land.

A public hearing was held before this Board on August 22, 2024, during which oral arguments were heard. Enterprise, the developer, was represented by Jason T. Vettori, Esquire, and Smith, Gildea & Schmidt, LLC (collectively, "Developer"). Protestants, The Rosedale Community Association, were not represented by counsel, however, Mr. Russ Mirabile, President of the Rosedale Community Association presented oral argument. A public deliberation was held by this Board on August 22, 2024.

PROCEDURAL HISTORY AND BACKGROUND

On April 5, 2022, a PUD application was submitted by the Developer to the County Council. On July 5, 2022 the County Council Approved Resolution 27-22 in accordance with Baltimore County Code ("BCC") §32-4-242, such that the Ridgedale PUD became eligible for

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review by County agencies. Resolution 27-22 set forth the community benefit accepted by the County Council which was as follows:

- (i) an environmental benefit by proposing to achieve at least a silver rating according to the U.S. green Building Council's LEED Green Building Rating System or proposing residential structures that achieve at least a silver rating according to the ANSI (American National Standards Institute) NGBS (National Green Building Standard);
- (ii) a land use benefit, including a public fitness walking trail;
- (iii) a public policy benefit promoting economic development opportunities by providing workforce housing; and
- (iv) a capital benefit of donating an existing dwelling on the site to the Rosedale Volunteer Fire Company for training exercises, and a twenty-thousand-dollar (\$20,000.00) contribution to the Rosedale Volunteer Fire Company.

A Post-Submission Community Input Meeting was held on June 16, 2022. A Pre-Concept Plan Conference was held on August 8, 2022. On January 24, 2023, a Concept Plan Conference ("CPC") was held. On April 27, 2023, a Community Input Meeting ("CIM") was held. On December 20, 2023, Development Plan Conference ("DPC") was held. At the DPC, the Baltimore County agencies responsible for the review of the original Development Plan submitted written comments and requested changes. Those changes made to the original Development Plan were redlined (the "Redlined Development Plan"). (Dev. Ex. 1). During the ongoing review, the County agencies requested further changes which were bluelined (the "Bluelined Development Plan"). (Dev. Ex. 1). The Certificate of Posting was completed on March 17, 2024 and recertified on April 16, 2024. The Hearing Officer's Hearing ("HOH") was held via Webex on April 18, 2024 during which minor changes were requested by County agencies and/or the undersigned for clarification and those changes were greenlined on the final Plan for which approval is sought (the "Greenlined Development Plan").

A full evidentiary hearing was held by Administrative Law Judge Maureen E. Murphy on April 18, 2024, wherein testimony was given, and evidence was presented by the representatives of the various relevant Baltimore County Agencies as well as the Developer and the Protestants.

To approve the PUD, the Administrative Law Judge is charged with reviewing the testimony and evidence presented and deciding whether each of the factors set forth in BCC, §32-4-245(c) have been met. The Administrative Law Judge must independently find evidence on each factor. BCC §32-4-245(c)(1) - (5) states:

(c) *Basis for approval.* The Hearing Officer may approve a proposed PUD development plan only upon finding that:

- (1) The proposed development meets the intent, purpose, conditions, and standards of this section;
- (2) The proposed development will conform with Section 502.1.A, B, C, D, E and F of the Baltimore County Zoning Regulations and will constitute a good design, use, and layout of the proposed site;
- (3) There is a reasonable expectation that the proposed development, including development schedules contained in the PUD development plan, will be developed to the full extent of the plan;
- (4) Subject to the provisions of §32-4-242(c)(2), the development is in compliance with Section 430 of the Baltimore County Zoning Regulations; and
- (5) The PUD development plan is in conformance with the goals, objectives, and recommendations of one or more of the following: the Master Plan, area plans, or the Department of Planning.

In the opinion issued on May 2, 2024, the Administrative Law Judge went through each of the above factors, in detail, and determined that the Development Plan satisfied each factor. In addition to this approval, the Administrative Law Judge also approved a Forest Conservation Variance to remove 2 specimen trees as set forth on the Forest Conservation Plan. (County Ex. 8; Dev. Ex. 14). Said approval was previously granted by the Director of the Department of Environmental Protection and Sustainability.

STANDARD OF REVIEW

The law governing this Board's review of a PUD is found within Baltimore County Code ("BCC"), §32-4-245(d) which requires that any appeal of a PUD to this Board to be reviewed in accordance with BCC §32-4-281(e). That Subsection reads as follows:

§ 32-4-281. APPEAL TO THE BOARD OF APPEALS.

* * * *

(e) *Actions by Board of Appeals.*

- (1) In a proceeding under this section, the Board of Appeals may:
 - (i) Remand the case to the Hearing Officer;
 - (ii) Affirm the decision of the Hearing Officer; or
 - (iii) Reverse or modify the decision of the Hearing Officer if the decision:
 1. Exceeds the statutory authority or jurisdiction of the Hearing Officer;
 2. Results from an unlawful procedure;
 3. Is affected by any other error of law;
 4. Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 5. Is arbitrary or capricious.

(2) Notwithstanding any provisions to the contrary, if the Hearing Officer fails to comply with the requirements of § 32-4-229(a) of this subtitle and an appeal is filed under § 32-4-229(a) of this subtitle, the Board of Appeals may impose original conditions as are otherwise set out in § 32-4-229(c) and (d) of this subtitle.

DISCUSSION

In this case the Board unanimously finds that the decision by the Administrative Law Judge shall be Affirmed.

At the hearing before the Board, Mr. Mirabile on behalf of the Protestants, argued only one issue, that of the inclusion of a fence. He believes the Administrative Law Judge made a mistake in addressing the subject matter of said fence. He stated that a fence surrounding the property was supposed to be included in the Development Plan and it was not. When asked by the Board if the issue was brought up at the community input meeting, Mr. Mirabile stated that it was, but it was ignored. He stated that he didn't find out that the fence was not included until approximately a week before the Administrative Law Judge hearing. He agreed that the issue of the fence was brought up at the Administrative Law Judge hearing and it was addressed by the Administrative Law Judge. He didn't believe that the Administrative Law Judge was presented with all the information relating to the fence. He agreed that he had the opportunity to address the fence at the hearing.

When reviewing Judge Murphy's decision, it is obvious the issue of the fence was addressed. In her opinion, she states:

"Having carefully considered the concerns of RCA, Mr. Cornelius' expert testimony and TIS regarding traffic was persuasive and there was no such expert testimony presented by RCA to counter Mr. Cornelius' findings or opinions. Similarly, the requested 6 ft. tall vinyl fencing around the perimeter of the Property is not required by law. Indeed, the western side of the Project will have a 3.5 ft. tall retaining wall along with a 3.5 ft. fence on top which provide 7 ft. of privacy screening. Additionally, if a perimeter fence were

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required here, it would have been part of the approved Schematic Landscape Plan; but it was not. The Developer here is providing significant landscaping and a Forest Conservation area protected by a perpetual easement in the north-western corner. In the event adjoining property owners require additional privacy, such fence could be erected on their properties, subject to all legal requirements. Accordingly, I will decline to condition the approval of the Greenlined Development Plan on RCA's objections.” (P. 25).

This fence issue was the sole argument presented by the Appellant during the Board hearing. No argument was presented to contest any of the factors outlined in BCC §32-4-245(c)(1) - (5), which form the basis of the ALJ's approval. Furthermore, no argument was provided to suggest that the ALJ's decision satisfied any of the criteria listed in BCC §32-4-281(e).

Additionally, while the Forest Conservation Easement, approved by the Administrative Law Judge, was not addressed at the hearing before the Board, we find that this approval is to be Affirmed as well. In her opinion, Judge Murphy stated:

“On June 8, 2023, the Director of DEPS recommended approval of the Developer's request to remove two (2) of the three (3) STs as set forth on the Forest Conservation Plan. (County Ex. 8; Dev. Ex. 14). While the ST-I and ST-9 are in good condition, they are standalone trees which are located in the limited area available for development of this Property. ST-5 will remain, and a Forest Conservation area measuring 0.62 acres +/- (27, 207 sf +/-) will be preserved in perpetuity. Pursuant to BCC, §33-6-116(d) and (e), I adopt the findings and reasons of the Director of DEPS as set forth in the DEPS approval letter dated June 8, 2023, and approve the Forest Conservation Variance to remove 2 STS.” (P. 24).

Nothing was presented to the Board that the Administrative Law Judge's decision regarding the removal of the specimen trees satisfied any of the factors listed in BCC §32-4-281(e).

The remaining issue before the Board is the Motion to Dismiss filed by the Owner/Developer and Response thereto filed by the Rosedale Community Association. Because

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the Board has unanimously agreed to Affirm the decision of the Administrative Law Judge, this issue is deemed Moot.

CONCLUSION

Based on our review of the evidence presented, the Board unanimously finds that the decision of the Administrative Law Judge to approve the PUD did not exceed the statutory authority or jurisdiction of the Hearing Officer; that it did not result from an unlawful procedure; that it is not affected by any other error of law; that it was supported by competent, material and substantial evidence in light of the entire record submitted; and the Administrative Law Judge did not act in any arbitrary or capricious manner. Additionally, the removal of the two specimen trees as approved by the Administrative Law Judge shall be Affirmed.

ORDER

THEREFORE, IT IS THIS 6th day of September, 2024, by the Baltimore County Board of Appeals,

ORDERED, that the Administrative Law Judge's decision to approve the Greenlined Development Plan/PUD known as "Ridgedale PUD", be, and it is hereby, **AFFIRMED**; and it is further

ORDERED, that the Forest Conservation Variance approval to remove two (2) specimen trees as listed on the Director of DEPS Approval Letter dated June 8, 2023, be, and it is hereby, **AFFIRMED**; and it is further

ORDERED, that the Motion to Dismiss filed by the Owner/Developer is **MOOT**.

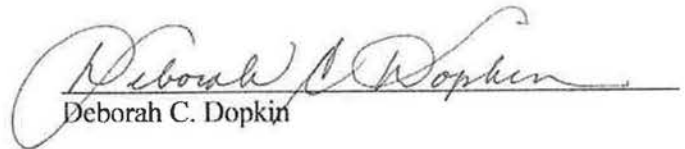
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Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

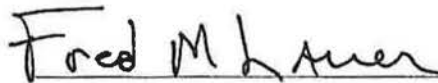
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Bryan T. Pennington, Panel Chair



Deborah C. Dopkin



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Board of Appeals of Baltimore County

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September 6, 2024

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RE: In the Matter of: *Enterprise Community Development, Inc. – Owner/Developer*
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Dear Counsel:

Enclosed please find a copy of the final Opinion and Order 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: Ned Howe/Enterprise Community Development, Inc.
Graceann Rehbein, Vice President/Rosedale Community Association
Office of People's Counsel
Maureen E. Murphy, Chief Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
Horacio Tablada, Director/DEPS
Lloyd Moxley, Development Manager/PAI
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law