

IN THE MATTER OF:
SEMINARY FALLS PARTNERSHIP, LLC
LEGAL OWNER AND DEVELOPER
OF THE PROPERTY LOCATED
ON W. SEMINARY AVENUE
(BEDFORD PROPERTY)
PAI #: 08-0904

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-24-033

8TH ELECTION DISTRICT
3RD COUNCIL DISTRICT

* * * * *

RULING ON MOTION TO DISMISS
AND
OPINION AND ORDER ON DEVELOPMENT PLAN

This case comes before the Board of Appeals for Baltimore County (“Board”) on appeal of a decision by the Administrative Law Judge (“ALJ”) dated March 6, 2024, approving a green-lined Development Plan for six single family dwelling lots, subject to conditions, and also approving a Forest Conservation Variance; and further appealing a May 1, 2024 Order by the ALJ denying Protestants’ Motion for Reconsideration.

A virtual public hearing was held before the Board on August 7, 2024, after which counsel submitted memoranda in lieu of closing argument.

Christopher D. Mudd, Esquire and Venable LLP represented Seminary Falls Partnership, LLC, the Developer. Michael R. McCann, Esquire represented Falls Road Community Association; Boxwood Homeowners Association; Dana L. Medica; Brendan Foley; Kirsten Wielobob; John Current; Ben Schapiro; Peggy Schapiro; and Paul Miller (collectively sometimes referred to as the “Protestants”).

FACTUAL BACKGROUND

The development is located on the north side of Seminary Avenue, west of its intersection with Mays Chapel Road and is approximately 21.28 ± acres of land (the “Property”). The

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Property as trapezoidal in shape; wider in the rear and narrow as it slopes towards West Seminary Avenue. The eastern portion of the property is affected by a stream. There is no public water or sewer as the Property is located outside the Urban Rural Demarcation Line (“URDL”). Environmental conditions constrain the developable area of the site. At the time the Development Plan was approved, the entire Property was zoned R.C. 5, permitting a total density of ten lots.

Developer proposes six lots served by a panhandle driveway, with access to West Seminary Avenue.

During the pendency of the approval process, three separate paths were proceeding concurrently through Baltimore County. The first was the approval of the six lot development plan; the second was the submission of an alternate two lot subdivision of the Property and subsequent recording of a plat; and third, was the quadrennial Comprehensive Zoning Map Process, Issue No. 3-042, which proposed and ultimately imposed the R.C. 7 zone on a portion of the Property.

Prior to Protestants noting their appeal of the ALJ’s March 6, 2024 approval, Developer pursued an alternate development plan for the Property, and successfully recorded a plat memorializing a two lot subdivision, unbeknownst to Protestants. Shortly thereafter, Protestants noted their appeal to this Board, resulting in the August 7, 2024 hearing. Subsequently, on August 27, 2024, the County Council enacted Bill No. 58-24, which took effect upon enactment, reducing the permissible density of the Property, thus prompting Protestants’ counsel to file a Motion to Dismiss the case on September 3, 2024, asking this Board to declare the Development Plan a nullity. On September 10, 2024, rather than deliberating the merits of the case as originally planned, the Board pivoted, asking Developer’s attorney to file a response to Protestants’ Motion

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to Dismiss. The Board set September 26, 2024 for argument and a deliberation on the motion, and pending the outcome of that deliberation, to deliberate on the merits. The chart illustrates these events chronologically.

<u>Date</u>	<u>Development Plan – Six Lot Subdivision</u>	<u>Plat – Two Lot Subdivision</u>	<u>CZMP Issue No. 3-042</u>
March 6, 2024	ALJ Decision approving Plan		
April 4, 2024	Protestants Motion for Reconsideration		
April 22, 2024		Plat submitted to Baltimore County for Review	
May 1, 2024	ALJ Decision denying Motion for Reconsideration		
May 23, 2024		Plat Recorded among Land Records	
May 31, 2024	Appeal Noted by Protestants		
June 14, 2024	Board schedules hearing on Appeal for 7/30/24, later postponed to 8/7/24		
July 3, 2024		1 st Amended Plat submitted to Baltimore County for review	
August 7, 2024	Board hearing on appeal of 6 lot subdivision		
August 27, 2024			Baltimore County Council passes Bill No. 58-24, rezoning a portion of property
September 3, 2024	Protestants file Motion to Dismiss based on rezoning		
September 10, 2024	Board deliberation postponed to consider Motion to dismiss		
September 26, 2024	Board hears argument on Motion to Dismiss; denies motions; deliberates merits, affirming ALJ		

LAW

With one exception, the jurisdiction of the Board of Appeals is appellate and limited by Baltimore County Charter Sec. 602 and the County Code.

Sec. 602. - Powers and functions of county board of appeals.

The county board of appeals shall have and may exercise the following functions and powers:

(a) Appeals from orders relating to zoning. The county board of appeals shall have and exercise all the functions and duties relating to zoning described in Title 10 of the Local Government Article of the Annotated Code of Maryland as such functions and powers may be prescribed by legislative act of the county council. All references in law to the board of zoning appeals shall be construed to refer to the county board of appeals. In all cases, except those excluded by this Charter or by legislative act of the county council, the order of the county board of appeals shall be final unless an appeal is taken therefrom in the manner provided in Section 604 of this Article. (emphasis added)

Baltimore County Code Article 32 (Title 4) of the Baltimore County Code (“BCC”).

Section 32-4-272 (“Procedure for Approval”) addresses the plat approval process:

BCC Section 32-4-272(e) states: “*Appeal Prohibited.* Appeal from the plat approval process is prohibited.”

That authority to hear development plan appeals is set forth and limited by BCC Section 32-4-281(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.

Baltimore County Code Section 32-4-229 (f) provides:

Restrictions on issuance of permit or plat. A plat may not be recorded and the Department of Permits, Approvals and Inspections may not issue a permit or record a plat in connection with a Development Plan for a period of 30 days after a final decision by the Hearing Officer on the Development Plan if the case involved an unresolved comment or condition. (emphasis added)

Baltimore County Code Section 32-4-101 defines vested:

(ccc) *Vested.* The term "vested" or "vesting" is a protected status conferred on a Development Plan. A vested Development Plan shall proceed in accordance with the approved Plan and the laws in effect at the time Plan approval is obtained. A property owner, developer or applicant obtains vested rights for a Development Plan in accordance with § 32-4-264 of this title.

Baltimore County Code Section 32-4-264 provides:

§ 32-4-264. - *VESTING OF DEVELOPMENT PLANS.*

(a) In general. A Development Plan vests in accordance with the provisions of this section.

(b) Non-residential Plan.

(1) A non-residential Plan for which a plat is not recorded vests when substantial construction occurs with respect to any portion of the Plan.

(2) A non-residential Plan for which a plat is recorded vests when plat recordation occurs for any portion of the Plan.

(c) Residential Development Plan.

(1) A residential Development Plan for which a plat is not recorded vests when substantial construction occurs with respect to any portion of the Plan.

(2) A residential Development Plan for which a plat is recorded vests when plat recordation occurs for any lot, tract, section or parcel thereof.

DISCUSSION

On September 26, 2024, at a virtual public deliberation, the Board considered the Protestants' Motion to Dismiss the underlying development plan approval based on the change in zoning. Petitioner asserted that the recordation of the plat is not appealable and vests the R.C. 5 zoning, and that the Board has no authority to make any determination regarding the plat. We agree based on the express language of BCC, §32-4-272(e) in which plats are not appealable, and the unique sequence of events affecting the Property.

Having been recorded, the plat confers vested status on the Property and continued development under the R.C. 5 zoning.

Protestants argue that BCC, §32-4-229(f) should have prohibited plat recordation since it occurred within 30 days after the ALJ's May 1, 2024 decision. Protestants contend that issues raised before the ALJ by themselves were left unresolved by the ALJ decision, or, in other words, that they were left in a position where they would have to appeal to resolve their issues, that a plat should not have been recordable.

"Restrictions on issuance of permit or plat. A plat may not be recorded and the Department of Permits, Approvals and Inspections may not issue a permit or record a plat in connection with a Development Plan for a period of 30 days after a final decision by the Hearing Officer on the Development Plan if the case involved an unresolved comment or condition." (emphasis added)

Examining the record below, to which we are bound, the ALJ left no comment or conditions unresolved in the March 6, 2024 order in which she detailed every agency concern and their resolution and every Protestant concern. Though the resolution may not have satisfied Protestants, the comments or conditions (all as defined in the Code and documented through the lengthy approval process), the ALJ resolved each based on the Code and within her discretion as the sole trier of fact. Therefore, the Board denies the Motion to Dismiss.

That the Developer pursued an alternate strategy and plan is not prohibited. In the case of *Montgomery County v. Singer*, 321 Md. 503 (1990), the Court stated that "[i]t is simply good lawyering...to establish a backup position" where local development guidelines were being changed.

DEVELOPMENT PLAN

The Board next considered the Appeal of the Development Plan on the merits. Protestants/Appellants focused on five major areas in which they allege the ALJ erred:

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Protestants allege that the Developer's position that it is underutilizing the available density is merely posturing, because given the environmental constraints and required easements, the Property could not support more than the six lots proposed. While this argument may suggest the site is being overly developed, the ALJ found that by the express language of BCZR, §1A04.3, density is not calculated by deducting environmental areas, stormwater management areas or easements. We agree.

Protestants claim that the ALJ erred by approving a waiver of open space and permitting a fee-in-lieu payment for required local open space. The ALJ found that under BCC, §32-6-108(f)(1), a fee-in-lieu is permitted where meeting the local open space requirement on-site or off-site is "not feasible," meaning, not "practicable" or "reasonable". Based on the determination of the Director of PAI, the ALJ found that the local open space under BCC, §32-6-108 had been satisfied. We see no legal error in her recognition of the evaluation by the Director of PAI or her determination that the requirement had been satisfied.

A third contention by Protestants is that the ALJ erred in upholding the approval of Forest Conservation Special Variance Applications to remove Specimen Trees. The ALJ adopted the findings and reasoning of the Director of Environmental Protection and Sustainability permitting the removal of seven Specimen Trees while preserving over nine acres of the total tract in perpetuity in Forest Buffer and Forest Conservation easements, with the condition that the Developer shall use all reasonable measures and protections during construction to save three of the Specimen Trees (as indicated on the Forest Conservation Plan "to be removed if necessary") and prevent impacts to their critical root zones. We find no legal error in the ALJ's decision on this issue.

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Protestants, while conceding there is no legal right to protect a viewshed, argue that the ALJ should have considered the impact of the proposed development on their views. Neither the BCC, BCZR nor Maryland common law provides a property owner the right to a particular viewshed from their property. With this in mind, the ALJ held that Protestants' objection that their subjective views will be altered if the Project is approved has no legal merit. We note that in any zone permitting residential use, neighboring residences and their impacts are to be expected. Accordingly, we affirm the ALJ's findings on this issue.

Lastly, we address the issue of traffic. There is no dispute that Seminary Avenue and Falls Road are impacted by heavy traffic at various times during the day. In fact, the ALJ conditioned approval on the Developer making certain improvements to Seminary Avenue. Since Seminary Avenue is a state road, those improvements were reviewed and approved by the State Highway Administration. Protestants contend that notwithstanding the condition of the approval, the intersection is a failing intersection under the Standards of the BCZR 4A, *Growth Management*.

Each side is cherry-picking language from the BCZR Growth Management law to support its position: Petitioner contends that it is inapplicable because the Property is not within the URDL and is not identified as failing on the Basic Services Transportation Map; Protestants, on the other hand, maintain that the law's prohibition on new development in a traffic shed of a failing intersection applies, regardless of location within the URDL or on the Basic Services Map. Under the methodology articulated in BCZR §4A02.4.D – (Basic services mapping standards. Transportation) the intersection of Falls Road and Seminary Avenue is failing. Using the methodology employed by the State Highway Administration, it is not. Under the rationale advanced by Protestants, the URDL and Basic Services Maps adopted by the County should be

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overridden based on the intent of the law. Protestants further argue that Developer should have pursued a Special Variance pursuant to BCZR §4A02.4G. However, applying the rationale advanced by Developer, and adopted by the ALJ, those same factors limit the applicability of the law such that it does not apply here.

We believe the analysis should go further where the roads involved are State Roads, and a Board member raised this question to counsel. In this case both Seminary Avenue and Falls Road and their much-disputed intersection are controlled by the State of Maryland. Does the fact that these are state roads preempt the applicability of the Baltimore County Growth Management law?

The Baltimore County Zoning Regulations Section 4A00 contains the Growth Management law. It provides:

SECTION 4A00 - Purpose and Definitions

§ 4A00.1. - Purpose.

The purpose and intent of this article is to implement the objectives of the county-wide Master Plan and to adopt standards and guidelines relative to new development in all areas of the county which would result in land use patterns, location of new growth and timing of growth and development that is consistent with preservation of the quality of life in existing neighborhoods, with the ability of the county to provide necessary public facilities and services to support new development, with the ability of the county to correct existing service and facility deficiencies, with the preservation of natural, agricultural and environmental resources and with the promotion of new growth and development in appropriate areas. (emphasis added)

§ 4A00.2. - Definitions.

For the purposes of this article, certain words and terms are defined as set forth below:

CAPITAL IMPROVEMENTS PROGRAM — A proposed schedule of all future projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual budget, for the purchase,

construction or replacement of the physical assets of the community are included as set forth in the Baltimore County Charter. "Capital improvements program" shall refer to the existing or any subsequently adopted CIP as defined herein.

MASTER PLAN — The comprehensive plan for orderly development of the county, adopted by the County Council, pursuant to the Baltimore County Charter and Code, and including all parts and elements thereof which shall serve as the basis for land use regulations in the county.

“The purpose and intent of this article is to implement the objectives of the county-wide Master Plan and to adopt standards and guidelines... *with the ability of the county to provide necessary public facilities and services to support new development, with the ability of the county to correct existing service and facility deficiencies.*”

Reading the Growth Management law in its entirety, it is clear that the determination of the Basic Services Maps and which roads (arterial and arterial collector intersection) are identified as failing is an exercise entirely within the control of Baltimore County, and the correction of the conditions and subsequent amendment of the Basic Services Maps and Capital Improvement Program lies with the County Department of Public Works and Transportation, Planning Board and County Council. The stated purpose of the law is to make the County (not the developers) aware of the need for public improvements and to amend the Master Plan and Capital Improvement Plan to provide and fund the needed improvements. This falls squarely within both the duty and powers of local government.

In fact, the Capital Improvement Plan expressly excludes roads under state control:

“STREETS AND HIGHWAYS. All paved roadways in the County not under State control or on private property are the responsibility of the County Department of Public Works. Continuing shifts in traffic patterns prompted and accompanied by population changes, necessitate a continual improvement program aimed at maintaining and upgrading the existing network as well as providing new facilities required to implement the adopted Master Plan.”

Baltimore County, Maryland, FY 2025 Capital Budget, FY 2026-2030 Capital Improvement Program, Supporting Detail, p. 54 (emphasis added)

The County has no ability to correct existing service and facility deficiencies on “roads under State control”, whether or not the area of the development lies within the URDL and no matter what protocol is used to measure the adequacy of the intersection.

The result of holding that the Growth Management Law does not apply to state roads does not affect the result in this case, where the ALJ found, for other reasons, that the law did not apply and approved the Plan subject to conditions. We affirm the findings of the ALJ, applying either her rationale or that articulated above.

Protestants did not argue the ALJ’s denial of their Motion for Reconsideration before this Board, and accordingly, that issue is not before us.

CONCLUSION

For the reasons set forth herein and pursuant to BCC Section 32-4-281(e), we affirm the decision of the ALJ’s approval of the Greenlined Development Plan and Forest Conservation Variance.

ORDER

THEREFORE, IT IS THIS 11th day of October, 2024 by the Board of Appeals of Baltimore County

ORDERED, that the Administrative Law Judge’s Development Plan Opinion and Order approving the Greenlined Development Plan for the project known as “Bedford Property”, subject to conditions, be and is hereby **AFFIRMED**; and it is further

ORDERED, that the Forest Conservation Variance to remove the seven specimen trees as listed on the Forest Conversation Plan, be, and it is hereby **AFFIRMED**, with the condition that the Developer shall use all reasonable efforts and protections during construction not to remove three specimen trees listed on the Forest Conservation Plan.

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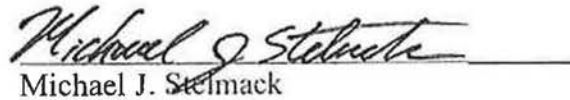
The relief above is granted herein shall be subject to the following condition:

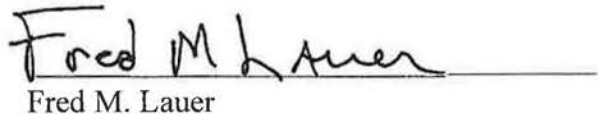
1. The West Seminary Rd. improvements as depicted on the Developer's "Improvements Exhibit" (Dev. Ex. 21) such that all roadway improvements thereon shall be completed by either the developer/legal owner of the Torch Hill Property and/or the developer/legal owner of Bedford Property as approved by and/or as directed by SHA and/or DPWT.

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**


Deborah Dopkin, Panel Chair


Michael J. Stelmack


Fred M. Lauer



Board of Appeals of Baltimore County

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October 11, 2024

Christopher D. Mudd, Esquire
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Towson, Maryland 21204

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: In the Matter of: *Seminary Falls Partnership, LLC – Legal Owner/Developer*
(Bedford Property)
Case No.: CBA-24-033

Dear Counsel:

Enclosed please find a copy of the Ruling on Motion to Dismiss and Opinion and Order on Development Plan 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 that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Executive Secretary

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: See Distribution List Following

In the matter of: Seminary Falls Partnership, LLC – Legal Owner/Developer
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Distribution List

October 11, 2024

Clay Goodier/Seminary Falls Partnership, LLC
Dana L. Medica and Brendan Foley
Kirsten Weilobob and John Current
Peggy and Ben Schapiro
Harold Burns/Falls Road Community Association, Inc.
Jay Weiss/Boxwood Homeowners' Association
Office of People's Counsel
Stephen Lafferty, Director/Department of Planning
Maureen E. Murphy, Chief Administrative Law Judge
Lloyd Moxley, Development Manager/PAI
C. Pete Gutwald, Director/PAI
Horacio Tablada, Director/DEPS
James R. Benjamin, Jr., County Attorney/Office of Law