

The April 25, 2022 special meeting of the Delhi Township Board of Trustees was called to order at 6:00 p.m. by Chairperson Cheryl A. Sieve at the Rapid Run Middle School, 6345 Rapid Run Road. Trustee Rosanne K. Stertz, Trustee Michael D. Davis, Fiscal Officer James J. Luebbe, Administrator Jack Cameron, and Law Director Bryan E. Pacheco were also present.

OPEN THE MEETING:

- The Board received certification that the rules adopted pursuant to Section 121.22 of the Ohio Revised Code were complied with for the meeting.
- Also in attendance: Assistant Township Administrator Greg DeLong; Joe Thomas, Metro Development; Robby Crosswell, Vice President BRG Realty, LLC; Don Brunner, President, BRG; John DelVern, Berebecker Engineering.
- The meeting began with the Pledge of Allegiance.

PUBLIC HEARING (CONTINUATION)

A Motion to continue the public hearing to hear a request for a proposed zoning map amendment to rezone 98 and 134 Anderson Ferry Road (parcel 40-0033-0153-00 and 540-0033-0154-00), from “C” Residence District to “PUD” Planned Unit Development, filed by BRG Realty Group, LLC, was moved by Trustee Davis and seconded by Trustee Stertz. Trustees Davis, Stertz and Davis voted YES. Motion carried.

INTRODUCTION & DISCUSSION: Assistant Administrator Greg DeLong

1. Mr. DeLong provided background of the variance request, of which started with a review by the Zoning Commission in November, 2021, followed by a review by the Board of Trustees at the public hearing held on March 14, 2022; and a review of zoning requirements that allow the applicant an opportunity to present his development plan and residents to state their concerns.
2. **Statement from the Township’s Law Director, Bryan Pacheco**
To address some comments from the public, Mr. Pacheco identified requirements regarding PUD rezoning requests and public hearings:
 - The Township is following Zoning requirements of which require them to conduct a public hearing for PUD rezoning requests to hear testimony from the property owner.
 - The Zoning Commission serves at the pleasure of the Board to review rezoning requests and to make recommendations to the Board.
 - The Board of Trustees is the decision-making body and will make the final decision on the request.
 - Reviewed guidelines for public hearings - the property owner has an unlimited amount of time to present his case, versus the residents who have a set amount of time to address their concerns during public comment.
 - As well as Zoning laws, the Trustees are also bound by the Fifth and Fourteenth Amendments of the Constitution, which gives business property owners and residential property owners the same rights to develop their land.
 - Property owners can also exercise their right to petition the government office for redress of grievances through the court system if their rezoning request is denied, if the reason for the denial was not found to be within the law.
 - The Trustees understand the tension between those rights and will have to make a decision based on testimony presented at the hearings and the Zoning Resolution.
 - The property owner has the option, if the rezoning request is denied, to approach the City of Cincinnati with annexation.
3. **Opening Remarks by the Trustees**
 - Mr. Pacheco addressed Trustee Stertz’ question what would the development of the property look like if the property was annexed with Cincinnati.
 - Mr. Pacheco addressed Trustee Stertz’ question is there any reason for denying the variance that the court would uphold.

- Trustee Sieve confirmed, the Board delayed their decision for the same reasons the Zoning Commission voted No; and the decision to continue the hearing was to give the property owner time to review their plan and make good on some of the concerns that were raised.
- Trustee Sieve commented on the rights of private property owners.
- Trustee Davis stated reasons for his uncertainty with how to vote on the variance and the outcome of a decision, and his desire to find some common ground on the issues with the site plan that BRG was asked to address.

4. **Robby Crosswell, Vice President of BRG Realty, LLC**

Introduction of his team members in attendance and background working with BRG Realty. Re-stated their desire to invest \$14 million in the community with this development. Confirmed that BRG purchased the property in 2016.

Mr. Thomas, with Metro Development, reviewed the following items, and responses, that were addressed at the previous public hearing:

- Traffic Impact Analysis Study - details of the study performed by SHA Engineering, and review by Brian William, principal engineer with the City of Cincinnati, who were in agreement with BRG's access study that there will be no need for future improvements to Anderson Ferry Road related to this project.
- Updated Site Plan – reviewed with greater detail the distances from buildings 1, 2, 3 and 4 (from the corner of the building), to each house located to the east.
- Fencing along the property line – reviewed the adjustment of the fence, moving up against the property line to act as a barrier for properties along the east property line.
- Grading on the site – reviewed the site lines provided by the civil engineer.
 - Further explained the site lines and what they exhibit: building #1 to house #4 – are at the same grade; building #2 to house #2 – the house is five feet higher than their building; building #3 to house #2 – grades are 10' lower than the adjacent house.
 - Exhibits showing the existing deciduous trees and natural mound.
 - Commitment to add 8' evergreen trees where the deciduous trees do not exist for additional buffering.
 - Identified the existing earth berm that provides additional screening for the majority of homes to the east.
 - Identified the finished floor elevations.
- Retaining Walls – reviewed the limestone product made by Ready Rock in Cincinnati for the walls to be installed at the northwest and southeast corners of the property.
- Fencing, along the east property line – commitment to use a more decorative 5' black aluminum fencing along the east property line, instead of the black chain-link fence.
 - Fencing will be 6' in height.
 - Explanation of the placement of the fence, moved closer to the residential homes to provide easy access for maintenance work and liability issues.
 - Trustees Davis and Sieve stated concerns about the placement of the fence, and their desire to move it back to the apartment side of natural wooded area.
 - Description of the 40' area where the existing trees and mounds are located that will be maintained as a preservation area, and the 70' setback (the distance between the building corner to the property line), which will also be supplemented with additional 8' evergreen trees that will act as additional buffer during winter months when the deciduous trees are bare.
 - Commitment to put the fence 40' from the east property line, with evergreen trees added outside of the 40' buffer zone.
- Existing storm water outlet – 36" pipe at the southeast corner of the property will serve as an outlet for the neighbors to the east. Referred to Mr. DelVern's, report to follow:

5. **John DelVern, Bayer Becker, engineering firm in Mason, Ohio**

Mr. DelVern reported on the results of his study of the development site, based on Hamilton County's stormwater regulations and capacity expectations, and how the development will impact stormwater runoff:

- Found the existing 36" storm sewer pipe to be reasonably sized and satisfies the regulations.

- Backup issues experienced by the homeowners seem to be more of a maintenance issue, not a capacity issue, of which could be addressed by the developer.
- Proposed the addition of a retention basin on the west side of the site to direct stormwater west, to the 36" pipe downstream.
- With regard to the residents who have experienced flooding over the years, Trustee Sieve asked Mr. DelVern to explain what could be the source of the problem, and would the project increase the possibly of them having additional flooding.
 - Based on the elevation levels of the site, Mr. DelVern confirmed that there should not be any water backup issues on the site, adding that the size of the pipe tested is appropriate to maintain the flow of water. He added that any water backup issues would have to be related to a maintenance issue with the pipe, not a capacity issue. Furthermore, confirmed that the site sits downhill, and that storm water drains from east to west and continues to fall towards Anderson Ferry Road.
- In response to Trustee Stertz' question, who is responsible for maintaining the pipe, Mr. DelVern responded that it appears to be a private storm sewer.
- Regarding the retention basin that is being suggested for the west side of the site, Mr. DelVern confirmed that water runoff, from a little over 4 acres of the site area, would be re-directed to the storm water outlet on the west side of the property to better control the release of the water through the 36" pipe. The basin is designed to reduce the amount of acreage that is draining toward the 36" pipe by taking it to the west retention basin to better control it.
- He added that the basin would be designed to meet the standards of Hamilton County Storm Water Discharge System rules and regulations, the agency responsible for reviewing and monitoring the site throughout development.
- In response to Trustee Sieve's question, would the residents be adversely affected by water runoff while working on the installation of the catch basin, Mr. Thomas confirmed that the first step in the construction process is to address the stormwater management protocol and temporary runoff conditions and construct the water retention pond.

Conclusion: Mr. DelVern stated, from a stormwater perspective, the proposed development, designed with the added detention basin to reduce the post development release rate to at least predevelopment rate; if not less than predevelopment rates, will not negatively affect upstream property owners in any way.

6. Questions from the Trustees Addressed by BRG

- A concern from Trustee Stertz regarding the placement of dumpsters, Mr. Thomas confirmed they could come up with a better location for the dumpsters further west.
- In response to a question from Trustee Stertz, Mr. Thomas confirmed BRG purchased the apartments, along with the land, in 2016, and they manage the property as well.
- In response to a question from Trustee Stertz regarding BRG's response to property maintenance issues, Mr. Brunner confirmed that someone is on call 24 hours a day and they try to get work orders completed same day or next day.
- In response to a question from Trustee Stertz regarding the base level pay for renters, Mr. Brunner confirmed the current rent to income ratio to be 24%, effectively \$1,200 a month earnings.
- In response to Trustee Stertz' question do you own more property around the location of the development site, Mr. Brunner responded in the affirmative.
- In response to Trustee Stertz' question do you have any requirements or restrictions for your residents, Mr. Brunner confirmed they will go through a criminal screening process.
- Trustee Stertz referenced the existing density of 30 people per acre.
- Trustee Stertz recognized the taxing district as either Delhi, or Cincinnati, depending on the outcome.
- Trustee Stertz referenced the housing study of which identifies the need for apartments.
- In response to Trustee Davis' question regarding proposed fencing, Mr. Thomas confirmed that some type of fencing will be installed on top of the retention walls to prevent people from falling over the wall; in addition, they are proposing fencing along the property line.
- In response to Trustee Sieve's question, have you ever met with this kind of opposition, Mr. Thomas confirmed they have. If they would run into a problem with the variance, they would consider annexing to a body that would be more accepting of the multi-family use, as they have with other developments.

7. Public Comments:

- Mark Jacobs, 5178 Riverwatch Drive, confirmed he is a life-long resident and has worked in apartment maintenance for the past nine years. Communicated reasons why he is opposed to the proposed rezoning and the project, and stated concerns related to the current condition of the complex and some maintenance issues that he observed when he drove through the complex.
- Roger Donahue, 107 Clarebluff Court, resident for 40 years, communicated his expectation that the Trustees would follow the recommendation of the Zoning Commission, and concerns related to BRG's option to annex with Cincinnati.
- David Veldhaus, 100 Clarebluff Court, expressed his concerns regarding the exact location and size of the retaining walls, fencing, stormwater runoff, and the life expectancy of the existing 16" storm water drainage pipe. He expressed his preference to see the site developed with single-family homes, not multi-family apartments.
 - Mr. Thomas restated their commitment to leave the trees between the retaining wall and the residents to the east, to create no disturbance in the 40' buffer zone.
 - Confirmed the wall could be as high as 30' at the highest elevation.
 - Back yards are well vegetated, with additional tree plantings, the residents will not be able to see the wall from their back yards.
 - Consideration to move the fence back to the 40' marker, of which they are flexible with the final decision based on what would be best for everyone.
 - They will need to inspect the 16" pipe to determine its condition.
- Gregory Lane, 4965 Francisview Drive, stated that he is an architect and president of Riverside Community Council. Communicated that he reviewed the newly submitted drawings and reports for the preliminary stormwater analysis, traffic analysis, and April 19 revised concept plan, and the following concerns: found a conflict with BRG's commitment to preserving the trees located in the 40' buffer zone, at locations where the retaining walls would be installed, and his opinion that the existing trees would have to be removed prior to construction; the southeast wall will be more visible to the residents on Clareridge and Clareview; the amount of stormwater runoff that would be created from the disturbance of the forest around the walls; additional traffic on Anderson Ferry Road. In addition, confirmed concerns of residents of Riverside with regard to the size of the retaining walls, and the existing trees that would have to be removed above and below the walls. Stated that the Riverside Community Council, who does not support the density of this development, will be issuing letters of concern to the City of Cincinnati, Hamilton County Engineer's, and Delhi Township
- Randy Clark, 5027 Riverwatch, commented on the denial of the variance request by the Zoning Commission. Communicated his preference to see the property developed with single-family homes, and concerns that their property values would see a decline, and the 16" corrugated pipe, that carries the stormwater runoff, is beyond its service life.
- Catherine Barker, 4905 Riverwatch Drive, concerns include building on a hillside that has a history of being unstable; who would be responsible for any issues that would come up, during and after construction, related to additional erosion or slippage of the hillside and the result of possible damages to infrastructure and/or surrounding properties; statement that the buildings would be built into the bedrock.
 - In response to Ms. Barker's concerns, Mr. Thomas confirmed their major criteria for developing on the site is that it will be structurally sound, implying that some of the locations could involve anchoring into the limestone. Confirmed that the details of the final development plan would have to be reviewed and approved by geotechnical consultants, as well as the structural engineers would be designing the foundations of the buildings and the retaining walls.
- Harry Elsaesser, 5115 Clareridge Court, communicated questions and concerns about the property purchase and BRG's Plan B, if the variance would be denied.
 - Mr. Elsaesser's questions were addressed by BRG.

- Andrew Carelli, 5041 Clarevalley Court, communicated concerns regarding limited stores and resources, and access to daycare providers and schools, and the negative impact increasing the population with the Indian Lookout and Delhi Towne Square new developments could have on the community.
- Laura Niemeyer, 106 Clarebluff Court, stated that they have sold their home because of the new development, but chose to come to the meeting to support their neighbors. Stated her concerns, how creating a denser population could negatively impact access to our stores and capacity of our schools and daycare options; and the lack of information shared at earlier meetings.
- Tim Mitchell, 113 Clarebluff Court, has lived in the neighborhood for 36 years. Stated his appreciation of the Board and the difficult decision they have to make. Communicated his biggest concern being the lack of preparation and motivation by the BRG group in early meetings.
- Rita Finlay, 5020 Bonaventure Court, signed up to speak but did not respond when called.
- Bev Renadette, 4976 Francisview Drive, stated her concerns and questions related to the driveway access on Anderson Ferry Road; would it be low-income housing; how many people will be living in each apartment/building; and current maintenance issues that she identified at the complex.
 - Mr. Brunner addressed Ms. Rendette's questions.
 - Trustee Sieve commented on the inspection of the driveway of which concluded that it does have the capacity to hold the additional traffic.
- Tom Waller, 5510 Palisades Drive, has lived in Delhi for 41 years (1st 24 years on Mt. Alverno Road), prior to moving to Palisades. Stated his support of the residents who strongly object to the multi-family development being proposed. He reviewed some statistics related to police runs made to Indian Lookout that he obtained from Cincinnati Police Department. Communicated his concerns regarding how the development could have a negative effect on public safety services and response times.
- Joyce Lockwood, 5176 Clareridge Court, is sensitive to the fact that this is a difficult decision for the Board. Communicated a concern regarding legal representation if the Board would vote No and BRG would decide to annex to Cincinnati.
 - Mr. Pacheco stated his position to serve the Board and represent the Township in legal matters. Added that if the residents would object to an annexation, if it would happen, the group would need to seek legal representation independent from the Township. Confirmed that the final development plan, that will first go before the Zoning Commission, would address all of the concerns communicated by the residents.
 - Trustee Sieve recognized the willingness of BRG to work with the Township on the items that have been addressed.
 - Trustee Davis stated his concerns regarding the outcome of annexation and the development happening through Cincinnati's zoning regulations.
- Andrew Jacobs, 118 Clarebluff Court, is sensitive to the fact that this is a difficult situation and the Board has a difficult decision to make. He addressed his concerns about the effectiveness of the fence on the east property line (purpose to prevent easy access into the neighborhood from the new development), based on the plans, looks like the fence is only located behind the homes in the cul-de-sac; as well as the effectiveness of the fence on top of the retaining walls. Assuming the variance is approved, how will BRG be held to do all of the things that they have stated they will do.
 - Mr. Thomas addressed the concerns about the fences and confirmed that they would provide more connectivity throughout the development.
 - Mr. DeLong confirmed, if the variance is approved, all of the items that are being addressed would be reviewed during the final development plan. The reason why the Zoning Commission did not have all of the details was because they were not required at this point in the application process.

- Mr. Cameron addressed the Planned Unit Development classification, how it would benefit the Township and the residents with the development process; and confirmed, if the development would not happen and the property would be sold, the new classification would stay with the property.
- Donnie Abner, 228 Assisiview Court, has lived in Delhi for 20+ years and attended all of the meetings. Expressed his concerns regarding annexation of the land by the City of Cincinnati, and the possibility of an easement going in to serve the apartments as a driveway access through Mt. Alverno Estates. Stated that he stands with the residents of Delhi, and the residents of Riverside, who are opposed to the variance.
 - Mr. Pacheco commented on the process and the legality of a request and approval for an easement.
 - Mr. Thomas confirmed they have no interest in creating a driveway access into the neighborhood for egress or ingress.
- Jen Trennepohl, 5166 Clareridge Court, has lived in their home for 18 years (property identified in the plan as house #4). Communicated her objection to the variance, and why she would like to see the property developed under its current zoning Residential classification as single-family homes; main concern regarding the line of sight from the balconies to her home and neighbors' back yards. She also stated that she understands the elevations of the buildings, but does not understand what the elevation will be where the land dips.
 - Mr. Thomas provided the following responses to address Mrs. Trennepohl's concerns:
 - Building setback (from the corner of the building to the property line) – moved 30' farther to the west (now 70', originally 40').
 - Total distance between her back yard to the building is 145' total distance.
 - The current elevation of the mound with existing trees, located between their property and the BRG property, will remain intact.
 - Evergreen trees will be added in between the existing trees for extra buffering.
 - The site will be lowered as they prepare it for construction.
 - The fence will be moved an additional 40' to the west, so it will be more downhill, instead of on top of the hill.
 - Confirmed, the balcony, at level number 3, is roughly 18' off of the ground.
 - Typically, do not see much use of the balconies overall.
- Robert Luhn, 5047 Clarevalley Drive, attended all of the public meetings. Stated concerns regarding the process of annexation, and the possibility of a new dedicated driveway providing access in and out of the neighborhood.
- Jim Schroeder, 5167 Clareridge Court, communicated a concern regarding the disparity in the number of police runs made to Indian Lookout as reported by BRG, versus the number of runs reported by the resident who lives on Palisades, Mr. Waller.
 - Trustee Sieve stated that she would like to have a better understanding of the difference in the numbers that were reported.
 - Trustee Davis commented on the integrity of the resident who provided the report on the number of police runs, and also would like to learn more about the disparity in the numbers.
 - Mr. Brunner provided details of his public information request with the Cincinnati Police Department and the report that they received.
- Carla Conroy, 4965 Francisview, shared details about her property of which is located within the Hillside District (half in Cincinnati, and half in Delhi Township), and her experience obtaining a permit for a swimming pool through Cincinnati. She stated her opinion about working with Cincinnati on annexation of the property, and considers that it would be difficult to get permits approved for the project.

- Katie Neese, 5146 Clareridge Court, stated her concerns regarding the school district designation of Oak Hills for the new development area, versus if annexed, would the buildings for the new development fall under Cincinnati Public Schools.
 - BRG stated they were informed that the 6.9-acre property would remain within the boundaries of Oak Hills School District with annexation.
 - Mr. Pacheco stated that he could not confirm the school district boundaries.
 - Conversation about emergency services response if the property would remain in Delhi or move to Cincinnati.
 - Mr. Cameron confirmed, there are some locations in Delhi where the school district boundaries differ, in that the property would be located in Delhi while the school district designation would be Cincinnati Public Schools. He assumed that the Oak Hills Local Schools designation would stay with the property if annexed. Concerning emergency response, if the property would remain in Delhi Township, Delhi Fire and Police would be the first responding departments with mutual aid backup.
- Mr. Elsasser suggested that BRG could reduce the negative impact on the neighborhood by reducing the project from four to two buildings. Stated his opinion that Delhi needs more businesses, not more apartments or condominiums.
- Theresa Thein, 5137 Kincardine Drive, stated her surprise to hear the difference in the number of police runs reported by BRG, compared to Mr. Waller's report.
 - Trustees Sieve and Trustee Davis agreed that discrepancy in the numbers is a concern.
- Matt Pader, 135 Clarebluff, addressed his concerns related to the instability of the hillside, and that BRG did not do geotechnical testing on the site to verify feasibility of the construction.
 - Mr. Thomas confirmed that the geotechnical testing would happen after the zone change is approved, in preparation of the final development plan, of which if the results would be prohibitive for construction, they would not mitigate; the zone change is the first step in the application process; and the application process would be same if the property would remain in Delhi, or if it would be annexed by Cincinnati.
- Robert Luhn, communicated concerns if BRG would not be successful renting the apartments; the current appearance of the Indian Lookout complex looking run-down, how would they keep up with the added maintenance issues; opportunity to annex to Cincinnati if Delhi would deny future development plans; the school district designation if annexed to Cincinnati.
 - Mr. Brunner confirmed they are approaching the \$1,195 cost of rent for a 2-bedroom for the current apartments in the complex, with the investment for the new development, they would need to charge the same level for the new buildings.
 - Trustee Sieve communicated her concerns regarding maintenance issues at the complex.
 - In response to the question regarding the opportunity to change the school district designation if the property would be annexed to Cincinnati, Mr. Pacheco stated that he was not able to answer the question.

8. Motion to Close Public Hearing

A Motion to close the public hearing for ZC2022-04, was moved by Trustee Davis and seconded by Trustee Sieve. Trustees Davis, Stertz and Sieve voted YES. Motion carried.

9. Final Comments From the Board

- Trustee Davis stated that he was not prepared to vote on the zoning variance request for the following reasons:
 - Integrity questions about the location of the fence and previous request to put it on the Indian Lookout side, with the preservation area on side of the back yards of the residents.
 - Conflicting data with the crime statistics.
 - Residents' preference, to fight the development if the Board would deny the variance and they would go for annexation with Cincinnati.

- Trustee Stertz stated that she would like to continue the hearing to have more time to research a few items before voting.
- Trustee Sieve stated that she would prefer to take a pause, not only to review some of the additional items that were presented, but to give the residents an opportunity to consider what their options are.
- Trustee Sieve confirmed, the next public hearing would be held on Monday, May 9th at 6:00 p.m.
- Mr. DeLong confirmed public notice will be provided for the continuation of the meeting.

10. Motion to Set Hearing Date

A Motion to set hearing date for ZC2022-04 for May 9, 2022 at 6:00 p.m. with the location to be determined, was moved by Trustee Davis and seconded by Trustee Stertz. Trustees Davis, Stertz and Sieve voted YES. Motion passed.

ADJOURN MEETING:

With no further business to come before the Board, a motion to adjourn was moved by Trustee Davis and seconded by Trustee Stertz. Trustees Davis, Stertz and Sieve voted YES. Motion carried.

Approved: _____, Fiscal Officer
 _____, Chair
 _____, Trustee
 _____, Trustee

I hereby certify that the amounts needed to meet the above obligations have been lawfully appropriated and are in the treasury or the process of collection free from any and all obligations.

 James J. Luebbe, Fiscal Officer