



## Board of Appeals of Baltimore County

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July 17, 2015

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The Jefferson Building  
105 W. Chesapeake Avenue, Suite 204  
Towson, Maryland 21204

RE: *In the Matter of: Tridel, Inc.*  
Case No.: 14-170-SPHA

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 that reads "Sunny Cannington".

Krysundra "Sunny" Cannington  
Administrator

KLC/tam  
Enclosure  
Duplicate Original Cover Letter

c: Qutub Syed, President/Tridel, Inc.  
Paul A. Ratyck/APR Associates, Inc.  
David Martin  
Arnold Jablon, Director/PAI  
Lawrence M. Stahl, Managing Administrative Law Judge  
Andrea Van Arsdale, Director/Department of Planning  
Nancy C. West, Assistant County Attorney/Office of Law  
Michael E. Field, County Attorney/Office of Law

Ron Halley  
Steven & Diana Stratchko  
Wardell & Rosalin Lancaster  
Mark & Tami Balsamo  
Edward C. Adams, Jr., Director/DPW

IN RE: PETITIONS FOR SPECIAL  
HEARING AND VARIANCE  
(85 Yew Road)

Tridel Inc., *Legal Owner*  
Petitioner

15<sup>th</sup> Election District  
7<sup>th</sup> Councilmanic District

\* BEFORE THE  
\* BOARD OF APPEALS  
\* FOR  
\* BALTIMORE COUNTY  
\*  
\* Case No. 2014-0170-SPHA  
\*

\* \* \* \* \*

OPINION

This matter comes before the County Board of Appeals (the “Board”) as an appeal of a May 19, 2014 Opinion and Order by Administrative Law Judge John E. Beverungen granting Petitions for Special Hearing and Variance filed by Tridel, Inc., legal owner of the property known as 85 Yew Road (the “Property”). On May 27, 2014, a timely appeal to this Board was filed by Ron Halley, owner of an adjacent property known as 83 Yew Road.

The Board originally scheduled and convened a *de novo* appeal hearing on February 26, 2015. Appearing at the public hearing was Qutub Syed, representative of Tridel, Inc., the legal owner of the Property. The Petitioner was represented by David Karcecki and Adam Rosenblatt of Venable, LLP. Paul Ratych, a registered property line surveyor who prepared the site plan for the Petitioner, and David Martin, a landscape architect and expert in the field of land use and zoning, appeared on behalf of the Petitioner. Several neighbors also appeared in favor of the requested relief. Carole Demilio, Deputy People’s Counsel for Baltimore County, appeared, and two residents who adjoin the subject site appeared and opposed the requested relief.

At the outset of the February 26, 2015 hearing, counsel informed the Board that an agreement had been reached wherein the Appellant would withdraw any objection to the petitions if Petitioner would decrease the extent of the variance sought for the building-to-building setbacks between lots 2-3 and 3-4 of the Golden Forest subdivision. As originally filed, the request for variance sought relief “from Section 1B01.2.C.1.b of the Baltimore County Zoning Regulations (“BCZR”) to allow a minimum side building face setback of 15 feet in lieu of the required 25 feet between Lot Nos. 2 and 3 and Lot Nos. 3 and 4.” Upon agreement of all parties in attendance at the hearing, the petition was amended to allow “a minimum side building face setback of 20 feet in lieu of the required 25 feet between Lot Nos. 3 and 4.” The request for a reduced setback between Lot Nos. 2 and 3 was withdrawn. A redlined site plan reflecting the revised building envelope was marked and accepted into evidence as Petitioner’s Exhibit 1. A redlined petition was also marked and accepted into evidence as Petitioner’s Exhibit 2. As explained in detail below, the Board initially granted the amended request for variance based on the proffer of Petitioner’s counsel and the agreement of all parties present at the hearing.

Unfortunately, after the February 26 hearing concluded, Petitioner reviewed the layout of the property and realized that the building envelope agreed to at the hearing would not permit a dwelling similar to the homes in the surrounding neighborhood. Accordingly, Petitioner’s counsel contacted Ms. Demilio and asked whether the Appellant would be willing to accept an additional variance extending the building envelope 5 feet towards the rear property line. After much discussion, the parties were able to come to an agreement allowing the Petitioner to seek an additional rear yard setback variance without opposition provided certain conditions, which will be explained in detail below, are met.

As the rear yard setback variance was not part of the original zoning petition, the parties agreed, that the additional variance should be set in for another hearing before the Board and posted/advertised to include the new requested relief for the rear yard variance request. The Board agreed to set this matter in for an additional hearing on April 21, 2015, and Petitioner presented a certification of sign posting and advertising that was marked and accepted into evidence as Petitioner's Exhibit 8.

### **Factual Background**

Given the agreement of all parties present at the February 26, 2015 hearing, the Board permitted Petitioner's counsel to proffer the testimony that would have been provided to support the petitions for variance and special hearing. Petitioner's counsel proffered a detailed factual and legal summary of the issues at stake in this case. Paul Radych, who prepared the site plan for the Petitioner, was accepted as an expert in property line surveying and the preparation of site plans with knowledge of the requirements for submitting site plans in Baltimore County. His resume was marked and accepted into evidence as Petitioner's Exhibit 3. David Martin, a registered landscape architect with over 44 years of experience in land development, was accepted as an expert in landscape architecture with detailed knowledge of the County's zoning regulations and in particular the regulations relating to amending a Final Development Plan ("FDP") and requesting setback variances.

The evidence presented to the Board revealed that the Property is .1879 acres +/- in size and is now zoned D.R. 5.5. The Property, known as "Lot 3" of the Golden Forest subdivision, is located near the intersection of Rossville Boulevard and Kelso Drive in the Essex area of Baltimore County and is undeveloped. A CRG Plan for the Golden Forest subdivision was approved in 1990 and an FDP for the subdivision was approved in 1994. The FDP provides

that the building-to-building setbacks for houses between 20-25 feet in height, such as the houses on lots 2 and 4 of this development in relation to lot 3, are to be no less than 25 feet. A review of the site plan revealed that all of the 14 lots in the Golden Forest development with the exception of the Property and lot 12 are improved with single family dwellings.

At the April 21, 2015 hearing, Petitioner's counsel provided additional testimony in support of the rear setback variance. As the standard for the additional variance is the same as the original variance, the Board asked the Petitioner to provide a brief explanation of the additional request and the terms agreed to by the parties. A revised site plan was marked and accepted into evidence as Petitioner's Exhibit 9. Petitioner's counsel explained that the agreed upon building envelope is shown on Exhibit 9, and that Petitioner agreed to limit the size of the proposed house to 2,050 square feet not accounting for the garage and basement areas. Ms. Demilio also submitted a comment from the Department of Public Works dated April 20, 2015 as People's Counsel Exhibit 1. The parties explained their agreement that the request of the Department of Public Works with respect to the strict observance of drainage improvements required under the new residential building permit would be made a condition of approval in this case.

### **Decision**

#### **1. Building-to-Building Setback and Rear Yard Setback Variances**

Turning first to the petition for variances, the Board must be convinced that the Petitioner has satisfied § 307.1 of the BCZR which states, in pertinent part, as follows:

...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and

where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare....

The Board is guided by the holding provided by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md. App. 691, 698 (1995), wherein the Court writes that the Baltimore County ordinance requires:

"conditions...peculiar to the land...and...practical difficulty..." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties....

In requiring a finding of uniqueness, the *Cromwell* Court referred to the definition provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls....

*Cromwell*, 102 Md. App. at 710.

If the Property is determined to be unique, then the question becomes whether practical difficulties also exist. Toward this end, the Board acknowledges that a variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973). To prove practical difficulty for a variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

Whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

Whether the grant would do substantial injustice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and

Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

*Anderson v. Bd of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28 (1974).

Evidence presented to the Board revealed that the subject Property is uniquely “pie shaped” and the rear property line is further contained by environmentally sensitive areas. The existence of a cul-de-sac at the termination of Yew Road further pinches the property lines and resulting building envelopes creating a limited area of the Property that can be developed with a single family dwelling. Additionally, the Property is uniquely burdened by the domino effect of being the last undeveloped lot along the cul-de-sac as the building-to-building setbacks are determined by existing structures rather than the distance from property lines. *See* Aerial photograph marked and accepted into evidence as Petitioner’s Exhibit 6. Testimony revealed that, if the variance is denied, this would be the only property in the 14-lot subdivision that would not be permitted to contain a single family dwelling.

After reviewing all of the testimony and evidence presented, the Board has determined that the Petitioner has met his burden and the variances reducing the building-to-building setback between lots 3 and 4 to 20 feet and the rear yard setback to 30 feet will be granted. The Board finds that the property is unique by virtue of its shape, location, environmental constraints within the overall subdivision, and the impact of the existing structures that further decrease the size of the building envelope. If the variances are denied, Petitioner will experience a practical difficulty or hardship since the mandated setbacks will unreasonably prevent the Petitioner from constructing a single family detached dwelling on the Property. *See* Petitioner's Exhibit 5. Further, the agreement of all parties present at the hearing convinces the Board that the variances can be granted without any negative impact on the general welfare of the surrounding community and in the spirit and intent of the zoning regulations. Accordingly, the requested variances will be granted subject to the conditions agreed to by all parties to the proceedings.

## 2. Special Hearing to Amend the Golden Forest FDP

Turning next to the petition for special hearing, Petitioner requests relief pursuant to § 500.7 of the BCZR to approve an amendment to the Golden Forest FDP, lot 3 only, for a revised building envelope. Amendments to an FDP for residential subdivisions are approved in accordance with § 1B01.3.A.7 of the BCZR, entitled "Amendment of Approved Development Plans." That section provides that an FDP may be amended "in the manner provided under section 502" of the BCZR and subject to the considerations set forth in §§ 1B01.A.7.b(1) and b(3) of the BCZR.

The Board was satisfied that, if called to testify, David Martin would have explained that the request meets all of the requirements of § 502.1(a)-(i) in that permitting the

construction of a single family home on a lot created for that very purpose would not be detrimental to the health, safety or general welfare of the locality involved, create congestion in roads, fire hazards, cause overcrowding, interfere with adequate public facilities or light and air, and is consistent with the property's zoning classifications and within the spirit and intent of the BCZR.

The Board is also satisfied that, as required by § 1B01.3.A.7.b(1) of the BCZR, the Director of the Department of Planning certified that the proposed amendment to the FDP is in accord with the CMDP and the regulations contained in Article 1B of the BCZR. A copy of the Department of Planning's comment to that effect was marked and accepted into evidence as Petitioner's Exhibit 7.

Finally, the Board is persuaded that David Martin's testimony would prove compliance with § 1B01.03.A.7.b(3) of the BCZR in that the proposed amendment is consistent with the spirit and intent of the original FDP and applicable D.R. zone regulations. Indeed, the FDP was approved for 14 single family homes and the D.R. regulations permit single family dwellings as a matter of right.

For all of the foregoing reasons, the Board grants the petitions for special hearing and variance.

**ORDER**

**THEREFORE, IT IS THIS** 17<sup>th</sup> day of July 2015, by the Board of Appeals of Baltimore County:

**ORDERED** that the Petition for Variance from Section 1B01.2.C.1.b of the BCZR to allow a minimum side building face setback of 15 feet in lieu of the required 25 feet between

Lot Nos. 2 and 3 of the Golden Forest subdivision is **WITHDRAWN WITH PREJUDICE**; and it is further

**ORDERED** that the Petition for Variance from Section 1B01.2.C.1.b of the BCZR to allow a minimum side building face setback of 20 feet in lieu of the required 25 feet between Lot Nos. 3 and 4 of the Golden Forest subdivision is **GRANTED**; and it is further

**ORDERED** that the Petition for Variance to allow a minimum rear yard setback of 30 feet in lieu of the required 35 feet is **GRANTED**; and it is further

**ORDERED** the Petition for Special Hearing pursuant to § 500.7 of the BCZR to approve an amendment to the Golden Forest FDP, lot 3 only, for a revised building envelope is hereby **GRANTED**.

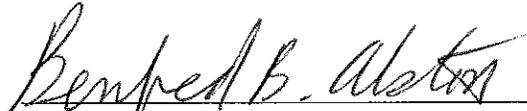
The Relief granted herein shall be subject to and conditioned on the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Drainage improvements required for a new residential building permit for Lot 3 will be observed and enforceable under this order. Per the attached comment, such drainage improvements will be specified by the Development Plan Review Bureau of the Department of Permits, Approvals and Inspections during review of the building permit on behalf of the Department of Public Works.
3. The square footage of the proposed single family dwelling on Lot 3 will be limited to 2,050 square feet or less, not accounting for the garage and basement areas, and will be located in the area shown on the attached Petitioner's Exhibit 9.

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

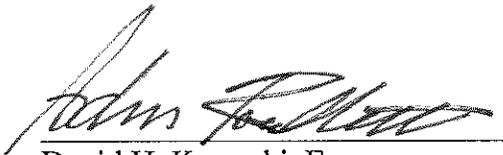
**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

\_\_\_\_\_  
David L. Thurston, Panel Chair

  
\_\_\_\_\_  
Benfred B. Alston

  
\_\_\_\_\_  
Meryl W. Rosen

AGREED AND ACCEPTED:

  
\_\_\_\_\_  
David H. Karceski, Esq.  
Adam M. Rosenblatt, Esq.  
*Attorneys for Petitioners*

  
\_\_\_\_\_  
Carole Demilio  
*Deputy People's Counsel  
for Baltimore County*

David Thurston was Chairman of the Board at the hearings on February 26, 2015 and April 21, 2015. He resigned effective June 15, 2015.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

To: Baltimore County Board of Appeals

From: Edward C. Adams, Jr., Director,  
Department of Public Works

Date: April 20, 2015

Subject: Case No. 14-170-SPHA  
85 Yew Road

The subject property is an undeveloped lot shown on subdivision plat SM 64/141 "Golden Forest". Our office was contacted by the owner of an adjacent lot at 83 Yew Road expressing concerns about lack of adequate drainage at his property which may be made more severe by development of 85 Yew Road.

Upon investigation our office found that the topography of the vicinity was such as to create wet conditions at the base of a slope to the rear of the properties involved. Plat SM 64/141 shows drainage easements that would provide space for drainage facilities to convey runoff to proposed wetland areas, but these facilities were evidently never constructed.

This is to request that any order by the Board of Appeals granting relief to the petitioner would include a requirement that drainage improvements required under the new residential building permit would be strictly observed and enforceable under the order. Such drainage improvements will be specified by the Development Plan Review Bureau of the Department of Permits, Approvals and Inspections during review of the building permit, on behalf of DPW.

Since too much time has elapsed since the Golden Forest development was built we are advised that the County has no way of requiring the drainage facilities be built now, apart from the new building permit. Allowing the new house construction with strict adherence to the permit requirements for drainage is the most feasible way to address the existing drainage problems at 83 Yew Road and also to prevent future drainage problems at this location.

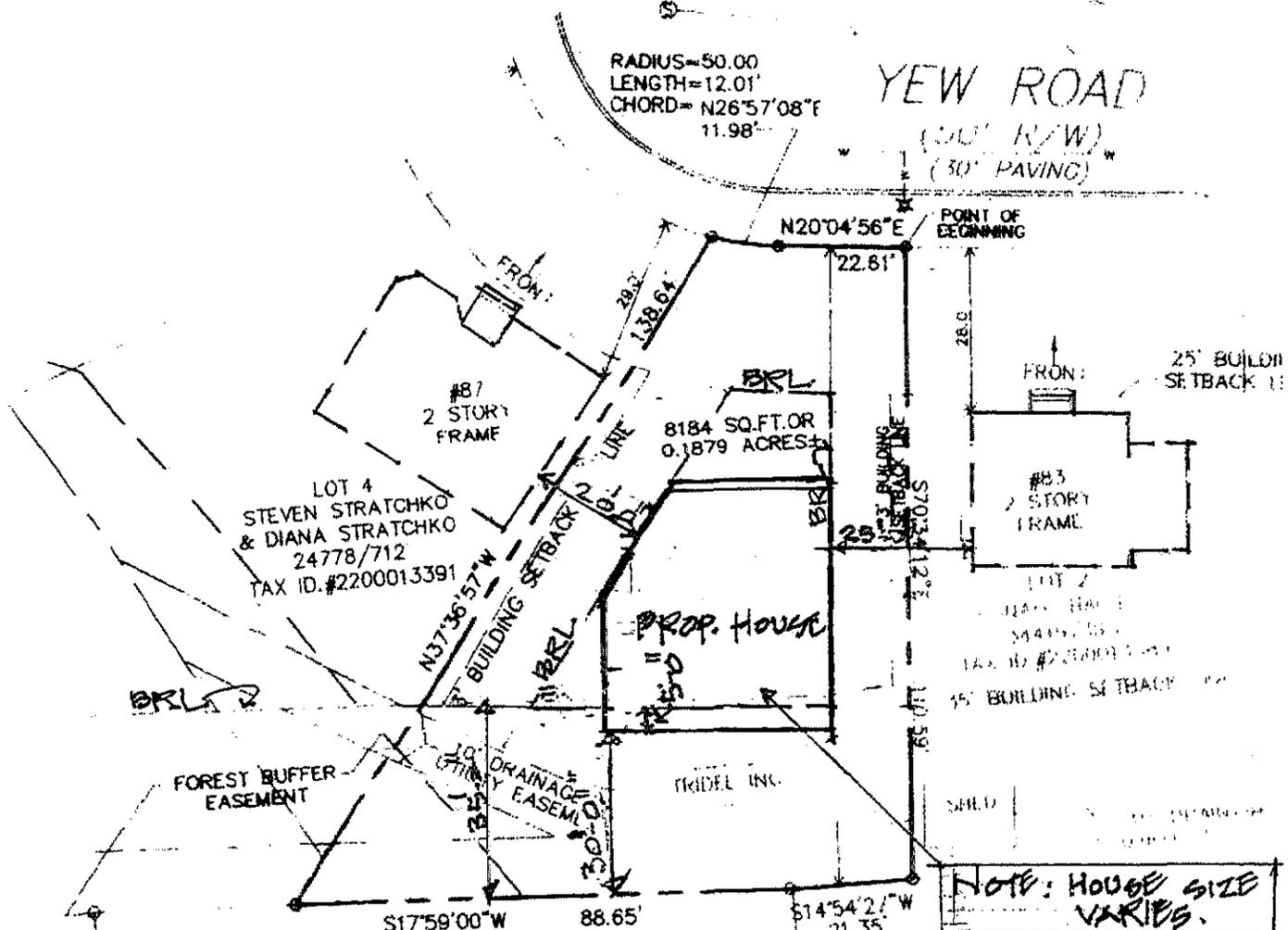
ECA, Jr /DLT/s

CC: Ronald Halley, owner, 83 Yew Road  
Carole Demilio, Peoples Counsel  
Dennis Kennedy, Chief, Development Plan Review Bureau (Attn: Robin Hurley)  
Sheldon Epstein, Chief, Storm Drain Design, Bureau of Engineering & Construction

RADIUS=50.00  
LENGTH=12.01'  
CHORD=N26°57'08"E  
11.98'

YEW ROAD

(50' R/W)  
(30' PAVING)



LOT 4  
STEVEN STRATCHKO  
& DIANA STRATCHKO  
24778/712  
TAX ID. #2200013391

8184 SQ.FT. OR  
0.1879 ACRES

25' BUILDING SETBACK

LOT 2  
JOHN CHRISTOPHER  
& MARY ANNA JESSA  
24778/712  
TAX ID. #2200013391

NOTE: HOUSE SIZE  
VARIES.

REV. 4-10-15

SCALE: 1"=30'

EXHIBIT NO. Pt. 9

#1930 SUNNYSIDE LANE  
LOT 1  
JOHN CHRISTOPHER &  
MARY ANNA JESSA  
6707/251  
TAX ID. #19000012154

#1930 SUNNYSIDE LANE  
LOT 1  
JOHN CHRISTOPHER &  
MARY ANNA JESSA  
TAX ID. #19000012154

SUNNYSIDE LANE  
#1930  
455  
#19000012154