

IN RE: PETITIONS FOR VARIANCE	*	BEFORE THE
W side of Philadelphia Road, NW corner		
Of Overlook Circle & Philadelphia Road	*	OFFICE OF ADMINISTRATIVE
11 th Election District		
5 th Councilmanic District	*	HEARINGS FOR
(5400 & 5401 Overlook Circle)		
	*	BALTIMORE COUNTY
G.W. Site Services, Inc.		
<i>Petitioner</i>	*	CASE NOS. 2011-0233-A and
		2011-0234-A

* * * * *

OPINION AND ORDER

These matters come before the Office of Administrative Hearings for Baltimore County for consideration of Petitions for Variance filed by the legal owner of the subject two (2) properties, G.W. Site Services, Inc. Since the properties are owned by the same owner and are located adjacent to one another, the two cases were heard contemporaneously. In Case No. 2011-0233-A (5400 Overlook Avenue), the Petitioner requests variance relief from Sections 259.9.b.4.b and 259.9.B.4.e of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit the construction of a dwelling with a side yard setback from major or minor arterial road of 27 feet in lieu of the required 40 feet and a rear yard setback of 42 feet in lieu of the required 50 feet respectively, and to amend the latest Final Development Plan (FDP) for “Overlook at Perry Hall”, Lot 42. In Case No. 2010-0234-A (5401 Overlook Circle), Petitioner requests similar relief. Specifically, relief is requested from Sections 259.9.b.4.b and 259.9.B.4.e of the B.C.Z.R., to permit the construction of a dwelling with a side yard setback from major or minor arterial road of 21 feet in lieu of the required 40 feet and a rear yard setback of 42 feet in lieu of the required 50 feet respectively, and to amend the latest FDP for “Overlook at Perry Hall”, Lot 37. The subject properties and requested relief are more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Francis X. Borgerding, Jr., Esquire, representing the Petitioner in this zoning matter. The record in this case reflects that the subject property was properly posted and advertised as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance at the hearing.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Specifically, a comment was received from the Office of Planning dated March 1, 2011 which states:

“Provided the Zoning Commissioner (Administrative Law Judge) grants the petitioner’s request, the side elevations facing Philadelphia Road shall not be left as blank walls. These elevations must be fully articulated with architectural details (i.e. doors, windows and window treatments, etc...)”.

Testimony and evidence offered revealed that the subject properties are irregular in shape, zoned D.R.3.5H and are located in the White Marsh area of Baltimore County. This is a development of 42 lots, with homes ranging in size from 2100 square feet to 2500 square feet. Without the variance requested, residences of only 1800 would be allowed. As a result, the “standard” product constructed in all of the other lots could not be erected. Items such as the master suite and two car garages would have to be considerably downsized or eliminated. Reducing the size therefore of the homes on the subject sites would result in a reduced price for those homes and a concurrent reduction in the property values of the development as a whole.

The properties are both corner lots at the intersection of Overlook Circle and Philadelphia Road. Further, they are oddly shaped, a situation made necessary as a result of their being among the last lots at the end of a line of otherwise standard lots and residences.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that as noted above, that are peculiar to the land and proposed structure which are the subject of these variance requests.

I further find that the failure to grant the variances would result in a practical difficulty to the Petitioner, especially when compared to all of the other lots in the development. These practical difficulties, including the diminution of the value of these homes in comparison others in the development arise directly as a result of the configuration of the lots, which are basis for the claim of uniqueness.

I further find that granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. Therefore, in all manner and form, I find that the variance requested can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R. as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 23rd day of March, 2011 by this Administrative Law Judge that Petitioner's Variance filed in Case No. 2011-0233-A (5400 Overlook Avenue) seeking relief from Sections 259.9.b.4.b and 259.9.B.4.e of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit the construction of a dwelling with a side yard setback from major or minor arterial road of 27 feet in lieu of the required 40 feet and a rear yard setback of 42 feet in lieu of the required 50 feet respectively, and to amend the latest Final Development Plan (FDP) for "Overlook at Perry Hall", Lot 42, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Variance filed in Case No. 2010-0234-A (5401 Overlook Circle), seeking relief from Sections 259.9.b.4.b and 259.9.B.4.e of the B.C.Z.R., to permit the construction of a dwelling with a side yard setback from major or minor arterial road of 21 feet in lieu of the required 40 feet and a rear yard setback of 42 feet in lieu of the required 50 feet respectively, and to amend the latest FDP for "Overlook at Perry Hall", Lot 37, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner shall comply with the Zoning Advisory Committee (ZAC) comment submitted by the Office of Planning dated March 1, 2011; a copy of which is attached hereto and made a part hereof.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:dlw