

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(85 Yew Road) *	OFFICE OF
15 <sup>th</sup> Election District	
7 <sup>th</sup> Council District *	ADMINISTRATIVE HEARINGS
Tridel Inc., <i>Legal Owner</i>	
Petitioner *	FOR BALTIMORE COUNTY
	<b>Case No. 2014-0170-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by David H. Karceski, Esquire, on behalf of Tridel, Inc., the legal owner. The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), for approval of an amendment to the “Golden Forest” Final Development Plan (FDP), Lot 3 only, for a revised building envelope. The Variance petition seeks relief from B.C.Z.R.§1B01.2.C.1.b 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.

As noted below, the FDP for this subdivision was approved in 1994, at which time both the zoning regulations and the Comprehensive Manual of Development Policies (CMDP, which was approved on April 16, 1992) specified 20 foot side building setbacks. As such, I believe the applicable setback is in fact 20 feet, although variance relief would be required in either instance. Counsel for petitioner notes that the FDP contains a chart specifying a 25 foot setback, and thus the Petition was filed using that figure.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1. Appearing at the public hearing in support of the requests was landscape architect David Martin, Qutub Syed (a principal of the legal owner) and surveyor Paul Ratych, whose firm prepared the site plan. David H. Karceski,

Esquire, and Justin Williams, Esquire of Venable, LLP appeared and represented the Petitioner. The adjoining neighbor at 83 Yew Road attended the hearing and opposed the Petition. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

The only substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP), which indicated it had no opposition to the relief requested.

The subject property is 0.1879 +/- acres in size and is zoned DR 5.5. The property is known as Lot 3 on the Final Development Plan for “Golden Forest.” The development was originally approved in 1990, and the CRG plan and FDP (which was approved in 1994) were admitted as Petitioner’s Ex. Nos. 2 & 3, respectively. Nearly all of the 14 lots shown on the plan are improved with single family dwellings. The Petitioner proposes to construct a dwelling on Lot 3, but requires variance relief to do so.

Based upon the testimony and evidence presented, I will grant the petition for variance.

To obtain variance relief a petitioner must show:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People’s Counsel*, 407 Md. 53, 80 (2008).

The Petitioner has met this test. Mr. Martin testified that the property was irregularly shaped, which can be seen on the plan. The witness noted the “pie shape” of the lot, which constrains the available building envelope. As such, the property is unique.

I also find that strict compliance with the B.C.Z.R. would result in practical difficulty, given that Petitioner would be unable to construct a dwelling on the lot, which is of course a permitted use in the zone. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

At the same time, I can appreciate the concerns articulated by Mr. Halley, who lives at 83 Yew Rd. Mr. Halley fears that his house will feel crowded by the proposed dwelling, and he also stated he had fire safety concerns with a home being located just 15 feet away from his house. Addressing the second point first, I was unable to locate a requirement in the building or fire safety codes which mandates any particular setbacks between single family dwellings, and as noted by counsel at the hearing, the Petitioner will be required to provide sprinkler service in any dwelling constructed on the site, in accordance with current law.

I think the first point raised by Mr. Halley is a valid concern, especially given the orientation of the existing homes on Lot Nos. 2 (83 Yew Rd.) and 4 (87 Yew Rd.). Specifically, the proposed home would be oriented exactly parallel to Mr. Halley's dwelling, while the home on Lot 4 is situated at an approximately 45 degree angle. As shown on the site plan, the east-facing wall of 87 Yew Rd. is angled away from Lot 3, and the proposed setback of 15 feet is only at the closest point towards the front of the lots, and would increase significantly towards the rear of the lots. Mr. Halley's dwelling, on the other hand, would be 15 feet from the proposed home along its entire side wall dimension. As such, I believe the site plan must be amended, to create an 18 foot setback for building side walls between Lots 2 & 3, and a 12 foot setback between side building walls on Lots 3 & 4.

The special hearing request is essentially a "housekeeping" matter, and would amend the Golden Forest FDP for Lot 3 only, to reflect the modified building envelope approved in the Order which follows. Mr. Martin opined that the Petitioner satisfied the requirements for such amendments set forth in BCZR §§ 502 & 1B01.3.A.7., and I concur.

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

THEREFORE, IT IS ORDERED this 19<sup>th</sup> day of May, 2014, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to amend the “Golden Forest” Final Development Plan (FDP), Lot 3 only, to reflect a revised building envelope, be and is hereby GRANTED and that FDP is amended in accordance with the terms of this Order.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §1B01.2.C.1.b to allow minimum side building face setbacks of 18 ft. in lieu of the required 25 ft. between Lot Nos. 2 and 3 and 12 feet in lieu of the required 25 feet between Lot Nos. 3 and 4, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its 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 must submit with 15 days of the date hereof an amended site plan, reflecting the side building face setbacks as approved herein.

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

JEB/sln

Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County