

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(Morning Glory Lane)	*	OFFICE OF
15 th Election District		
6 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
Gudmar MG, LLC		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0063-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Jason T. Vettori, Esquire, on behalf of the legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) for an amendment to the Final Development Plan (FDP) entitled “Morning Glory-Phase-2” (PAI # 15-932), which plat is recorded among the Land Records of Baltimore County in Plat Book JLE 79, folio 309. The Variance petition seeks relief from B.C.Z.R. §1B01.2.C.1.b: (1) to permit setbacks from rear building faces to rear property lines as follows: (A) 1600 Morning Glory Lane; 20 feet in lieu of the required 30 feet; (B) 1601 Morning Glory Lane; 21 feet in lieu of the required 30 feet; (C) 1602 Morning Glory Lane; 20 feet in lieu of the required 30 feet; (D) 1603 Morning Glory Lane; 24 feet in lieu of the required 30 feet; (E) 1604 Morning Glory Lane; 21 feet in lieu of the required 30 feet; and (F) 1606 Morning Glory Lane; 22 feet in lieu of the required 30 feet. 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 Rich Thometz, Dwight Little and Ed Levendusky. Jason T. Vettori, Esquire with Smith, Gildea & Schmidt, LLC appeared and represented the Petitioner. The file reveals that the Petition was advertised and the site was posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance.

The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Department of Planning (DOP), which did not oppose the request.

The subject property (zoned DR 3.5) involves six (6) unimproved lots located within the Morning Glory-Phase 2 subdivision approved in PAI # 15-932. The Petitioner indicates that the majority of new home purchasers want the option of constructing a “morning room” on the rear of their home. To do so, the builder requires relief from the rear yard setback requirements for these six lots (lots 1-4, 42 & 43).

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

To obtain variance relief requires a showing that:

- (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. The lots are somewhat irregularly shaped and are bordered by open space and a utility easement. As such they are unique. The Petitioner would experience a practical difficulty if the regulations were strictly interpreted, since it would be unable to offer for sale the type of home sought by current purchasers. The relief would in no way negatively impact the health, safety and welfare of the community, especially since the rear yards of the lots (with the reduced setbacks) are oriented towards open space lands and utility easements.

For the same reasons, I will also grant the Special Hearing relief, which will amend the Final Development Plan for “Morning Glory-Phase 2” for lots 1-4 and 42-43, to reflect the rear yard setback relief discussed above.

Pursuant to the advertisement, posting of the property, and the 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 18th day of November 2013, by this Administrative Law Judge, that the request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) for an amendment to the Final Development Plan (FDP) entitled “Morning Glory-Phase-2” (PAI # 15-932) for lots 1-4 and 42-43 **only**, to reflect the reduced rear yard setbacks approved herein, which plat is recorded among the Land Records of Baltimore County in Plat Book JLE 79, folio 309, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the request for Variance relief : (1) to permit setbacks from rear building faces to rear property lines as follows: (A) 1600 Morning Glory Lane; 20 feet in lieu of the required 30 feet; (B) 1601 Morning Glory Lane; 21 feet in lieu of the required 30 feet; (C) 1602 Morning Glory Lane; 20 feet in lieu of the required 30 feet; (D) 1603 Morning Glory Lane; 24 feet in lieu of the required 30 feet; (E) 1604 Morning Glory Lane; 21 feet in lieu of the required 30 feet; and (F) 1606 Morning Glory Lane; 22 feet in lieu of the required 30 feet, 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.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln