

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(Autumn Terrace Dr.)	*	OFFICE OF
11 th Election District		
5 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
Allender L.C.		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0236-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 David H. Karceski, Esquire on behalf of Allender L.C., legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to amend the final development plan for revised building envelopes. The Variance petition seeks relief from B.C.Z.R. as follows: (1) to permit a minimum side building face to side building face setback of 15 feet in lieu of the required 20 feet for Lot Numbers 1-121¹; and (2) to permit a minimum distance of 20 feet from rear building face to rear property line in lieu of the required 30 feet for Lot Numbers 1-121 pursuant to B.C.Z.R. § 1B01.2.C.1.B. 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 Matt Bishop, David Murphy and Ed Levendesky. David H. Karceski, Esquire and Justin Williams, Esquire of Venable, LLP, appeared and represented the Petitioner. Christopher Howard, a resident living in the community, attended the hearing and objected to the petitions.

¹ At the hearing, Petitioner submitted a revised attachment (dated October 17, 2013) to the zoning petition. The revised petition reflects that the Petitioner seeks variance relief for most of the lots in the subdivision, but not all 121 lots as referenced in the original filing.

The file reveals that the Petition was advertised and the site was posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) dated October 4, 2013, the Department of Environmental Protection and Sustainability (DEPS) dated September 13, 2013 and from the Bureau of Development Plans Review dated September 3, 2013.

The subject property is approximately 67± acres in size and is zoned DR 3.5. The Petitioner proposes to construct 121 single family dwellings on the site, which would be the second phase of a development approved in 2010, PDM# 11-1065. To do so requires zoning relief.

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. Bishop testified (via proffer) the property is irregularly shaped, bisected by power lines and a Baltimore Gas and Electric (BGE) easement, and constrained by environmental features. As such, it is unique.

If the regulations were strictly enforced, the Petitioner would not be able to build and offer for sale the homes being requested by its customers. Finally, I do not believe the grant of variance relief would endanger the public's health, safety and welfare.

SPECIAL HEARING

The petition for Special Hearing seeks to amend the final development plan for this residential project. As such, it is subject to B.C.Z.R. §1B01.3.A.7. This regulation essentially

requires a petitioner to satisfy the special exception standards set forth in B.C.Z.R. §502.1. Mr. Bishop testified the Petitioner has satisfied these requirements, and I concur. The regulation also requires that the Director of the Department of Planning determine the proposed amendment is in compliance with the Comprehensive Manual of Development Policies. Ms. Van Arsdale, in a memorandum dated October 4, 2013, made such a determination. Finally, the regulation requires that the amendment would be consistent with the original development plan. On this point, Mr. Bishop indicated that the original development plan did not contain any restrictions or notes that would prohibit this amendment, which indicates the proposal is consistent with the original plan. More to the point, similar setback relief was granted in Case # 2012-0025-A with respect to Phase 1 of this project, and thus the relief sought here would ensure that the layout of Phase 2 would match the design and layout in Phase 1. As such, I find the proposed amendment would be consistent with the spirit and intent of the original plan.

Mr. Howard, who resides in the community, opposed the relief and expressed concern that the yard areas would (with the reduced setbacks) be very small. He thought this would negatively impact the resale value of his home, and he believed that potential buyers would look at other developments in the vicinity having larger yard/lot areas. While I understand and appreciate Mr. Howard's concerns, I do not believe his testimony, without additional lay and/or expert testimony establishing that the revised building envelopes would cause or contribute to a decline in property values, can justify the denial of the petition for Special Hearing.

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 24th day of October 2013, by this Administrative

Law Judge, that Petitioner's request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to amend the final development plan for revised building envelopes, as shown on Exhibit 1, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance as follows: (1) to permit a minimum side building face to side building face setback of 15 feet in lieu of the required 20 feet for Lot Numbers 1-121; and (2) to permit a minimum distance of 20 feet from rear building face to rear property line in lieu of the required 30 feet for Lot Numbers 1-121 pursuant to B.C.Z.R. § 1B01.2.C.1.B, 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 comply with the ZAC comment dated September 13, 2013, submitted by the DEPS.

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