

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(9895 Belair Road) *	OFFICE OF
11 th Election District	
5 th Council District *	ADMINISTRATIVE HEARINGS
Route One Development Co., Inc.	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Petitioner *	Case No. 2015-0178-SPHA
* * * * *	

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed 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.”) to amend the 1st Amended Final Development Plan (FDP) for Gunpowder Overlook. In addition, a Petition for Variance pursuant to B.C.Z.R. §259.9.B.4.e seeks: to permit a side yard setback from the right-of-way of a major or minor arterial or collector road of 37 ft. in lieu of the required 40 ft. for Lot 48; and (2) to permit rear yard setbacks no less than 19 ft. for Lots 1-25, 27-41 and 44.

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. Timothy M. Kotroco, Esq. appeared on behalf of the Petitioner. Several neighbors attended the hearing to obtain additional information regarding the requests.

The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). The DOP had no objections to the requests, while the DPR noted that the variance requests should be

modified slightly to avoid interference with drainage and utility easements at the rear of some of the lots. The Order below incorporates the recommendations made by DPR.

The subject property is approximately 21.4 acres and is zoned DR 3.5H and DR 3.5. The Developer is constructing a community of 48 single family dwellings, to be known as Gunpowder Overlook. A model home is constructed on Lot 48, and the Developer will soon begin to sell the other lots shown on the plan. Developer's counsel indicated that buyers are looking for additional amenities when shopping for a new home (i.e., decks, family, rooms, etc.). Counsel stated that a builder in such a market requires some flexibility in lot configuration, hence the request for variance relief.

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).

Petitioner has met this test. The site is long and narrow, and according to Mr. Bishop, a landscape architect accepted as an expert, there is an 80' grade change from Bel Air Road to the rear of the site. 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 provide the amenities desired by home buyers. Finally, I find that the variances 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. This is demonstrated by the absence of county and/or community opposition.

PETITION FOR SPECIAL HEARING

The petition seeks to amend the Final Development Plan (FDP) to reflect the relief granted herein regarding yard setbacks. Only the model home has been constructed at the present time,

and thus the FDP can be amended in accordance with B.C.Z.R. § 1B01.3.A.7.a. This is an appropriate request and will be granted.

THEREFORE, IT IS ORDERED this 29th day of April, 2015, 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 1st Amended Final Development Plan (FDP) for Gunpowder Overlook, in accordance with the terms of this Order, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking: (1) to permit a side yard setback from the right-of-way of a major or minor arterial or collector road of 37 ft. in lieu of the required 40 ft. for Lot 48; and (2) to permit rear yard setbacks not less than 21 ft. for Lots 1-25 and 27-41, and not less than 26 ft. for Lot 44, in lieu of the required 40 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to 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.

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