

IN RE: DEVELOPMENT PLAN HEARING & PETITION FOR VARIANCE	*	BEFORE THE OFFICE OF
(11127 Reisterstown Road)	*	ADMINISTRATIVE HEARINGS
4 th Election District		
2 nd Council District	*	FOR
(WILDER, JOSEPH FAMILY PROPERTY)	*	BALTIMORE COUNTY
Joseph Wilder Family, LLC, <i>Owner</i>		
Craftsmen Developers, LLC, <i>Applicant</i>	*	HOH Case No. 04-0693 &
Developer		Zoning Case No. 2015-0261-A

* * * * *

**ADMINISTRATIVE LAW JUDGE’S COMBINED
DEVELOPMENT PLAN AND ZONING OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for a public hearing on a development proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). Patricia A. Malone, Esquire, with Venable, LLP, on behalf of Joseph Wilder Family, LLC, *Owner* of the subject property, and Craftsmen Developers, LLC, *Applicant*, (hereinafter “the Developer”), submitted for approval a one-sheet redlined Development Plan (“Plan”) prepared by Little & Associates, Inc., known as “Wilder, Joseph Family Property.”

The Developer proposes 61 townhouses on 8.36 acres of land zoned OR-2 (office building – residential). The land is currently unimproved, and the bulk of the property is wooded. There is a small portion (0.45 acre) of the tract zoned D.R. 3.5, but it is not included in the calculation of residential density for the project.

The Developer also has filed a Petition for Variance pursuant to § 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R) seeking:

- A. From § 1B01.2.C.1.C of the B.C.Z.R. and the Comprehensive Manual of Development Policies (C.M.D.P.), to allow for a side building face to right-of-way setback that is less than the required 25 ft.,

- B. From § 1B01.2.C.1.C of the B.C.Z.R. and the C.M.D.P., to allow for a front building face to public street right-of-way setback that is less than the required 25 ft.,
- C. From § 1B01.2.C.1.c of the B.C.Z.R. and the C.M.D.P., to allow for a building face to tract boundary setback that is less than the required 30 ft.,
- D. From § 1B01.2.C.1.c of the B.C.Z.R. and the C.M.D.P., to allow for a rear yard setback to rear property line that is less than the required 30 ft.,
- E. From § 1B01.1.B.1 of the B.C.Z.R. and the C.M.D.P., to reduce the Residential Transition Area (RTA) setback to less than the required 75 ft. and to eliminate the RTA buffer,
- F. From § 1B01.2.C.1.c of the B.C.Z.R. and the C.M.D.P., to allow a front setback to the public street right-of-way of an arterial roadway for certain rear-loaded garage units to be a minimum of 28 ft.,
- G. From § 260.6.B.6 of the B.C.Z.R., to allow for a driveway length from a building face to public right-of-way or sidewalk that is less than the required 20 ft.,
- H. From § 301.1 of the B.C.Z.R., to allow a deck (open porch) to project into the minimum required rear yard more than the allowed 25 % (requesting to have a minimum 10 ft. deep deck in the rear yard),
- I. From C.M.D.P., to allow for a private yard less than the required 500 sq. ft., and
- J. From § 1B01.1.B.1 of the B.C.Z.R. and the C.M.D.P., to allow buildings with a height exceeding 35 ft. within the 100 ft. RTA.

In addition, Developer also requests a Modification of Standards, pursuant to Division II, Section A, of the C.M.D.P., to approve an increase in the maximum number of units in a row from 6 units to 8 units. This modification would pertain to three “groups” of townhouses.

Details of the proposed development are more fully depicted on the redlined one-sheet Development Plan that was marked and accepted into evidence as Developer’s Exhibit 1. The property was posted with the Notice of Hearing Officer’s Hearing on July 10, 2015 and Zoning Notice on July 18, 2015 in compliance with the regulations. The undersigned conducted the hearing on August 7, 2015, at 10:00 AM, Room 205 of the Jefferson Building, 105 West Chesapeake

Avenue, Towson, Maryland.

In attendance at the Hearing Officer's Hearing (HOH) in support of the Plan on behalf of the Developer was Conor Gilligan, Kris Thompson, and Mickey Cornelius. Also in attendance was G. Dwight Little, Jr., and George McCubbin, P.E., with Little & Associates, Inc., the consulting firm that prepared the site plan. Patricia A. Malone, Esquire, with Venable, LLP, appeared and represented the Developer.

Numerous representatives of the various Baltimore County agencies who reviewed the Plan also attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections (PAI): Jan M. Cook, Project Manager, Dennis A. Kennedy and Jean M. Tansey (Development Plans Review [DPR]), and Aaron Tsui (Office of Zoning Review). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (DEPS), and Lloyd T. Moxley from the Department of Planning (DOP).

Several members of the community attended the hearing and opposed the project, and their names are contained on the sign-in sheets.

Under the County Code, I am required first to identify any unresolved comments or issues as of the date of the hearing. At the hearing, each of the Baltimore County agency representatives identified above indicated that the redlined Development Plan (marked as Developer's Exhibit 1) addressed any comments submitted by their agency, and they each recommended approval of the Plan. Mr. Moxley presented a school analysis (Baltimore County Exhibit 1) indicating that Owings Mills Elementary School was "overcrowded" in that its enrollment exceeds State rated capacity. Even so, Mr. Moxley testified that a new elementary school (Lyons Mills Elementary School) will open this year, and under County law the elementary school district will therefore no longer be "overcrowded." Mr. Moxley also noted a Pattern Book for the development (Developer's Exhibit

2), had been approved by the DOP.

Ms. Tansey, the County's landscape architect, indicated the Developer will provide a payment of \$265,960 in lieu of providing the Local Open Space (i.e., 61,000 sq. ft.) required by the regulations. Baltimore County Exhibit 2.

In the "formal" portion of the case, the Developer presented two witnesses. First was G. Dwight Little, Jr., a professional engineer accepted as an expert. Mr. Little described the evolution of this project, and also provided testimony concerning the variances requested by the Developer. He testified the Developer would comply with all current storm water regulations, and noted that the DOP requested "rear-loaded" garages which generated the need for several of the variance requests. He opined the Developer satisfied all Baltimore County rules and regulations, including the requirements set forth in § 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) for variance relief.

The next witness was Mickey Cornelius, a traffic engineer accepted as an expert. Mr. Cornelius explained his firm prepared a traffic study (Developer's Exhibit 5) which shows that the signalized intersections in the vicinity of the project would function at a level-of-service "A" or "B". Mr. Cornelius also explained that both the State and Baltimore County required a realignment of Gwynnbrook Avenue, which he opined was unsafe in its current configuration. In response to community concerns, Mr. Cornelius testified that the Developer was willing to work with Baltimore County in arriving at solutions to reduce the speed of traffic along Gwynnbrook. He noted that a posted speed limit of 25 mph would be appropriate, and that traffic calming devices or other measures could be used to help reduce the speed at which vehicles travel through the neighborhood.

ZONING REQUESTS AND ISSUES

As noted earlier, the Developer has filed a Petition for Variance seeking relief from a variety of setbacks, height limitations and other aspects of the Baltimore County Zoning Regulations

(B.C.Z.R). Mr. Little reviewed each of these requests, and explained which of the proposed lots were involved with any given variance request. Mr. Little testified the site is unique and that the Developer faced unusual circumstances in that the realignment of Gwynnbrook Avenue, when coupled with the DOP's preference for rear-loaded garages, greatly constricted the available building envelope on the site. Based on the testimony of Mr. Little, I find that the subject property is indeed unique, and that the Developer would encounter a practical difficulty if the regulations were strictly interpreted, in that it would not be able to proceed with the project as planned. In addition, I believe the modification of standard pertaining to the maximum number of homes permitted in a group is subject to a similar analysis, and should also be granted.

But I do not believe that the same can be said for the variance requests pertaining to the Residential Transition Area (RTA) buffers and setbacks. The Developer contends it included the RTA variance request in an abundance of caution, and that it does not believe those regulations are applicable in the first instance given that the property is zoned OR-2. While this argument may have some merit, the Developer has not through a special hearing request or otherwise sought a ruling on this issue. As such, I will assume the RTA is applicable and will consider the variance requests as filed.

The requirements for variance of the RTA regulations are more stringent than in the ordinary variance case under B.C.Z.R.. § 307. The regulations provide a specific rule for variance of RTA, as follows:

§ 1B01.1. General use regulations in D.R. Zones.

B. Dwelling-type and other supplementary use restrictions based on existing subdivision and development characteristics.

1. Residential transition areas and uses permitted therein.

c. Variance of RTA.

(1) Notwithstanding the provisions of Section 307, the hearing

officer, upon the recommendation of the Departments of Public Works, Planning, Environmental Protection and Sustainability, Permits, Approvals and Inspections, Recreation and Parks, or Economic and Workforce Development, may determine the amount of RTA in cases where a single tract is more than two acres, is vacant, or contains no more than one single-family detached, semidetached or duplex dwelling.

- (2) The RTA for a tract may be modified as directed by findings pursuant to § 32-4-402 and the hearing officer's hearing under Article 32, Title 4, Subtitle 2 of the Baltimore County Code. However, the hearing officer may not reduce the amount of RTA unless the officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed.

In the present case, it does not appear as if any of the County agencies enumerated in subsection (1) of the above regulation made any specific recommendation concerning the RTA, and it is thus B.C.Z.R. § 1B01.1.B.1.c(2) that is applicable in this case. Under that regulation, as noted by members of the community, the “hearing officer may not reduce the amount of RTA unless ... such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed.” In this case, the undisputed testimony of the community members is that they will in fact be adversely impacted by the variance of the RTA in that the townhouse units along the northern boundary of the property will loom large above the back yards of their residences on Walk Avenue. Mr. Little explained that the topography is such that the foundations of the new homes would be 8-10 ft. above the grade of Walk Avenue, and that the townhomes themselves would be approximately 35 ft. in height. In these circumstances, the new homes would sit approximately 45 ft. higher than the existing homes on Walk Avenue, and would in several instances be close to the existing homes if the RTA buffer was eliminated, as sought by Developer.

The Developer has proposed to mitigate the effects of this impact by providing a fence along the northern property boundary. While this may provide a measure of security and privacy, it will

not address the obvious adverse impact upon the existing residents of the new townhomes positioned so close to the property boundary. While Mr. Little opined Developer satisfied B.C.Z.R. § 307, he did not provide testimony or render an opinion as to whether the community would be “adversely impacted” by the elimination of the RTA. As such, while the Petition for Variance will be granted for the majority of the requests, the variance requests pertaining to the RTA (Items E and J as listed on the petition) will be denied for the reasons stated above.

The Baltimore County Code provides that the “Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations.” B.C.C. § 32-4-229. While the Plan as presented complies with the development regulations and would be approved in the absence of the variance requests, the denial of the RTA variances necessitates a denial of the development plan.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this **11th** day of August, 2015, that the “**WILDER, JOSEPH FAMILY PROPERTY**” redlined Development Plan, marked and accepted into evidence as Developer’s Exhibit 1, be and is hereby **DENIED**.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (B.C.Z.R), as follows:

- A. From § 1B01.2.C.1.C of the B.C.Z.R. and the Comprehensive Manual of Development Policies (C.M.D.P.), to allow for a side building face to right-of-way setback that is less than the required 25 ft.,
- B. From § 1B01.2.C.1.C of the B.C.Z.R. and the C.M.D.P., to allow for a front building face to public street right-of-way setback that is less than the required 25 ft.,
- C. From § 1B01.2.C.1.c of the B.C.Z.R. and the C.M.D.P., to allow for a building face to tract boundary setback that is less than the required 30 ft.,
- D. From § 1B01.2.C.1.c of the B.C.Z.R. and the C.M.D.P., to allow for a rear yard setback to rear property line that is less than the required 30 ft.,

- F. From § 1B01.2.C.1.c of the B.C.Z.R. and the C.M.D.P., to allow a front setback to the public street right-of-way of an arterial roadway for certain rear-loaded garage units to be a minimum of 28 ft.,
- G. From § 260.6.B.6 of the B.C.Z.R., to allow for a driveway length from a building face to public right-of-way or sidewalk that is less than the required 20 ft.,
- H. From § 301.1 of the B.C.Z.R., to allow a deck (open porch) to project into the minimum required rear yard more than the allowed 25 % (requesting to have a minimum 10 ft. deep deck in the rear yard), and
- I. From C.M.D.P., to allow for a private yard less than the required 500 sq. ft.,

be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the Baltimore County

Zoning Regulations (B.C.Z.R), as follows:

- E. From § 1B01.1.B.1 of the B.C.Z.R. and the C.M.D.P. to reduce the Residential Transition Area (RTA) setback to less than the required 75 ft. and to eliminate the RTA buffer, and
- J. From § 1B01.1.B.1 of the B.C.Z.R. and the C.M.D.P., to allow buildings with a height exceeding 35 ft. within the 100 ft. RTA,

be and is hereby **DENIED**.

IT IS FURTHER ORDERED that the request for a Modification of Standards, pursuant to Division II, Section A, of the C.M.D.P., to approve an increase in the maximum number of units in a row from 6 units to 8 units, be and is hereby **GRANTED**.

Any appeal of this Order shall be taken in accordance with Baltimore County Code, § 32-4-281.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw