

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(41 Stemmers Run Road)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
R & B Development Company	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2014-0279-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed on behalf of the legal owner of the subject property. As filed, the Petition seeks variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows (1) to allow a front yard setback of 29 ft. in lieu of the required 30 ft. to allow a rear yard setback of 22 ft. in lieu of the required 30 ft. pursuant to §1B01.2.C.1.a; and (2) that the total setback between buildings is 22 ft. in lieu of 60 ft. pursuant to §1B01.2.C.1.e. The Petition was amended at the hearing to reflect a proposed 21' front yard setback in lieu of the required 30'. The Petitioner explained that the existing building to be razed has an 8' deep front porch, and that the surveyor failed to include this dimension in calculating the setback for the proposed new structure. The subject property and requested relief is more fully depicted on the amended site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the public hearing in support of the request was Susan Clancy, Donna Rolnick and licensed surveyor J. Scott Dallas. The Petition was advertised and posted as required by the B.C.Z.R. There were no Protestants in attendance, and the file does not contain any letters of opposition. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) (which supports the request provided the new

building serve only the apartment complex, and not be used for commercial purposes) and from the Bureau of Development Plans Review (DPR), indicating that a landscape plan is required.

The property is approximately 4.054± acres and is zoned BL and DR 16. The property is improved with an apartment complex known as Townhomes at Rivers Crossing. The site is also improved with an older building (constructed in approximately 1940) that serves as an office for the complex. Petitioner proposes to raze this structure and construct in its place an attractive and modern office and community building. To do so requires variance relief.

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).

Petitioner has met this test. The property is irregularly shaped and is therefore unique.

Petitioner would experience a practical difficulty if the regulations were strictly interpreted, because it would be unable to construct a more modern (and ADA compliant) community building for the apartment complex. The variance can be granted in harmony with the B.C.Z.R. and without negatively impacting the health, safety and welfare of the community. This is demonstrated by the absence of County and/or community opposition.

THEREFORE, IT IS ORDERED, this 20<sup>th</sup> day of August, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Baltimore County Zoning Regulation (B.C.Z.R.) as follows: (1) to allow a front yard setback of 21 ft. in lieu of the required 30 ft., and to allow a rear yard setback of 22 ft. in lieu of the required 30 ft., pursuant to §1B01.2.C.1.a; and (2) to allow a total setback between buildings of 22 ft. in lieu of 60 ft. pursuant to §1B01.2.C.1.e, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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.
- Prior to issuance of permits, Petitioner must have approved by the County Landscape Architect a landscape plan for the site.
- The building to be constructed on site shall be for the use of the apartment complex and its residents only, and shall not be used for commercial purposes.

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

JEB:sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County