

IN RE: DEVELOPMENT PLAN HEARING & PETITION FOR VARIANCE	*	BEFORE THE OFFICE OF
(7433 Prince George Road)	*	ADMINISTRATIVE HEARINGS
3 rd Election District	*	
2 nd Councilmanic District	*	FOR
(Prince Georges Close)	*	BALTIMORE COUNTY
Milton Wolfe, <i>Owner</i>	*	
TSC/Prince George LLC, <i>Developer</i>	*	HOH Case No. 03-0478 & Zoning Case No. 2015-0110-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.”). Jennifer R. Busse, Esquire, with Whiteford, Taylor & Preston, LLP, on behalf of Milton Wolfe, the owner of the subject property, and TSC/Prince George LLC, the developer of the subject property (hereinafter “the Developer”), submitted for approval a two-sheet redlined Development Plan (“Plan”) prepared by Colbert, Matz & Rosenfelt, Inc., known as “Prince Georges Close.” In addition, the Developer has filed a Petition for Variance seeking setback relief with respect to several of the proposed lots.

The property was formerly occupied by the Pikesville Swim Club, which is now closed. The Developer proposes to construct ten (10) single family dwellings on the site, which is zoned D.R. 5.5 and contains approximately 2.74 acres.

Details of the proposed development are more fully depicted on the redlined two-sheet Development Plan that was marked and accepted into evidence as Developer’s Exhibit 1A and 1B. The property was posted with the Notice of Hearing Officer’s Hearing and Zoning Notice, both on December 14, 2014 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing. The undersigned conducted the hearing on

January 22, 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 Ron Bacquol. Also in attendance was Maxwell R. Vidaver, with Colbert, Matz & Rosenfelt, Inc., the consulting firm that prepared the site plan, and civil engineer Thomas Hewitt. Jennifer R. Busse, Esquire, with Whiteford, Taylor & Preston, LLP, appeared and represented the Developer. There were no Protestants or interested citizens in attendance at the hearing.

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 Cook, Project Manager, Dennis A. Kennedy and Jean M. Tansey (Development Plans Review [DPR]), Brad Knatz, Real Estate Compliance, 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 Brett M. Williams from the Department of Planning (DOP).

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 No. 1A and 1B) addressed any comments submitted by their agency, and they each recommended approval of the Plan. Counsel provided a Pattern Book for the development (Developer's Exhibit 6), which according to Mr. Williams was approved by the DOP. He also presented a school analysis (Baltimore County Exhibit 1) indicating that the area schools are not overcrowded using state guidelines. Ms. Tansey, the County's landscape architect, indicated the Developer will provide a payment of \$37,900 in lieu of providing the Local Open Space required by the

regulations. Baltimore County Exhibit 2.

In the “formal” portion of the case, the Developer presented three (3) witnesses. First was Ron Bacquol, a project manager with Sanford Companies. Mr. Bacquol described how the Developer acquired the property and generally identified the nature of the project. The next witness was Maxwell R. Vadaver, a planner accepted as an expert. Mr. Vadaver described in detail the project, and also provided testimony concerning the unique aspects of the site for the variance analysis. He opined the Developer satisfied all Baltimore County rules and regulations. The final witness was Thomas Hewitt, who is a civil engineer and was accepted as an expert. Mr. Hewitt described the storm water management plan for the site, and noted the Developer would satisfy the current regulations by reducing by 64% the impervious surface on the site; i.e., mainly parking lots and basketball courts used by the former swim club.

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. After due consideration of the testimony and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from the various County agencies that the Plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the Development Plan.

PREVIOUS PLANS

Mr. Cook, from PAI, noted that a prior residential Development Plan for this site (also known as PAI Case No. III-478, “Prince Georges Close”) was approved and signed on March 10, 2008. Developer’s Exhibit 7. A record plat was not recorded, and pursuant to B.C.C. §§ 32-4-261 and 32-4-264, that plan did not vest and has expired. An Order to that effect will be included below.

Mr. Cook also stated a County Review Group (CRG) residential plan for this site was

approved and a final development plan was signed on July 10, 1992. A record plat was recorded on August 26, 1992. While under current law [B.C.C. § 32-4-264(c)(2)] this plan/plat would enjoy vested status, the law in 1992 provided that vesting occurs only upon issuance of building permits or completion of substantial construction. B.C.C. (1988) § 26-216(c). Since that plan/plat did not vest, it too expired/lapsed pursuant to B.C.C. (1988) § 26-216(a)(3), and an Order to that effect will follow.

ZONING REQUESTS

The Developer filed a Petition for Variance seeking relief from § 1B01.2.C.1.b of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) To permit a front building face to public street right of way setback of 17 ft. in lieu of the required 25 ft. for lot 1; and (2) To permit a side building face to side building face setback of 16 ft. in lieu of the required 20 ft. for lots 1-5.

For the most part, these are “internal” variances, meaning they seek setback relief for the distances between the proposed single family dwellings, rather than from a property boundary on the exterior of the site adjoining another person’s property.

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 Developer has satisfied this test. As Mr. Vadaver described, the site is irregularly shaped and is constrained by steep slopes and a floodplain. As such, it is unique. If the regulations were strictly interpreted, the Developer would experience a practical difficulty, given it could not construct the single family dwellings as shown on the plan. I believe the relief can be granted

without jeopardizing the safety, health and welfare of the public, as demonstrated by the absence of County and/or community opposition.

Pursuant to the advertisement, posting of the property, and public hearing held thereon, the requirements of which are contained in Article 32, Title 4, of the Baltimore County Code, the “Prince Georges Close” Development Plan shall be approved.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 27th day of January, 2015, that the “**PRINCE GEORGES CLOSE PROPERTY**” redlined Development Plan, marked and accepted into evidence as Developer’s Exhibit 1A and 1B, be and is hereby **APPROVED**.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from § 1B01.2.C.1.b of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) To permit a front building face to public street right of way setback of 17 ft. in lieu of the required 25 ft. for lot 1; and (2) To permit a side building face to side building face setback of 16 ft. in lieu of the required 20 ft. for lots 1-5, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the prior Final Development Plan (FDP) for this site signed on July 10, 1992, and the record plat recorded at plat book 64, page 98, be and is hereby EXPIRED/LAPSED; and

IT IS FURTHER ORDERED that the prior Final Development Plan (FDP) for Prince Georges Close Development Plan approved and signed on March 10, 2008, for which no record plat was recorded, be and is hereby EXPIRED/LAPSED.

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