

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(5705 Kenwood Avenue)		
14 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
SFB LLC Mid State Community Bank	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2015-0025-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of the legal owner of the subject property. The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §1B01.1.B.e(5) to permit the height of Units 1,2 and 6 as depicted on the attached plan, to be 39 ft, 4.8 in. in lieu of the required 35 ft. maximum within the RTA (Lot 1-5700 Nicken Ct., Lot 2-5702 Nicken Ct., and Lot 6-5710 Nicken Ct.). 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 request was Michael McCann, Andrew Stine, and Joseph R. Woolman, III ,Esquire, appearing on behalf of the Petitioners. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the State Highway Administration (SHA) a copy of their comment is attached hereto and made a part of this Opinion and Order. They indicated that they approve of the variance but as a condition of approval, Petitioner must contact the State Highway Administration to obtain an entrance permit.

The subject properties are three (3) of twenty six (26) units of an approved first amended

Final Development Plan dated May 11, 2011.

Counsel proffered on behalf of the Petitioners that once construction actually began, it was discovered that due to a dip in the topography, the three (3) units in question could not be constructed as planned and previously approved. Unless the variance was granted, allowing the three (3) subject units to be slightly higher than the other twenty-three (23) units, those units could not be constructed as previously planned and would not include a garage. The Plat to Accompany this variance request supports the proffer. He noted that, other than the height variance requested, no other changes to the plan were necessary or being requested.

I find that the three (3) units in question are unique in comparison to the other twenty-three (23) in this development; and that the uniqueness is due to the topography of those three (3) units when compared to the other twenty-three (23) in the previously approved development.

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).

Accordingly, I find that Petitioner has met the above test.

THEREFORE, IT IS ORDERED, this **23rd** day of September, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R."): (1) 1B01.1.B.e(5) to permit the height of Units 1,2 and 6 as depicted on the attached plan, to be 39 ft, 4.8 in. in lieu of the required 35 ft. maximum within the RTA (Lot 1-5700 Nicken Ct., Lot 2-5702 Nicken Ct., and Lot 6-5710 Nicken Ct.); (2) to amend the first amended final development plan of lots 1,2 and 6

only in accordance with the terms of this Order, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- As a condition of approval for Variance, Petitioners must contact the State Highway Administration to obtain an entrance permit.

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

LMS:sln

Signed _____
LAWRENCE M. STAHL
Managing Administrative Law Judge for
Baltimore County