

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(11500 Terrace Dr.)	*	OFFICE OF
11 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
Allender, L.C., <i>Legal Owner</i>		
Ryan Homes, <i>Contract Purchaser</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2016-0192-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 Allender, L.C., legal owner and Ryan Homes, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the 5th Amended Final Development Plan (FDP) for the development known as “5737 Allender Road.” In addition, a Petition for Variance seeks to permit a minimum distance of 20 ft. from rear building face to rear property line in lieu of the required 30 ft. for Lot Numbers 25-26; 29-30; 31-32; and 39-43. Site plans were marked and accepted into evidence as Petitioners’ Exhibit 1A & 1B.

Appearing at the public hearing in support of the requests was Aaron York and Matt Bishop. David H. Karceski, Esq. and Adam Rosenblatt, Esq. represented the Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS). Conditions will be included in the Order below to address these comments.

The overall site contains approximately 67 acres and is zoned DR 3.5. The site is improved with a large community of single-family dwellings (SFD), the development of which has been divided into three phases. This is the third and final phase, involving approximately 29 acres of the overall site.

SPECIAL HEARING

The special hearing request seeks to amend the Final Development Plan (FDP) for the project. In fact, this would be the 5th Amended FDP, and as noted earlier approximately two-thirds of this community has been constructed and sold. The amended plan would depict reduced rear yard setbacks for several of the lots in the subdivision. For these lots the builder would offer the purchaser the option of a morning room addition, a “bump-out” which would be positioned off the rear of the home, necessitating the reduced setback requested in the petition for variance. There will be no increase in the number of lots, and the size and designs of the homes offered will remain the same. Petitioners’ Ex. 4A-4C (elevation drawings of model homes). Mr. Bishop, a registered landscape architect accepted as an expert, testified (via proffer) Petitioners satisfy the B.C.Z.R. §502.1 standards which are referenced in the FDP amendment regulations at B.C.Z.R. §1B01.3. As such, the petition will be granted.

Petitioners also explained that DEPS is at the present time reviewing a petition for variance involving the forest conservation areas shown at the rear of the lots referenced herein. Mr. Bishop has met with DEPS reviewers, who indicated the variance request would be granted, although it was unclear at the time of the zoning hearing whether the forest conservation easement areas would be reconfigured or whether Petitioners would be required to pay a fee-in-lieu and/or provide additional plantings in connection with the variance. To address either scenario, the Petitioners submitted alternate site plans (Ex. 1A & 1B) and 5th

Amended FDPs (Ex. 6A & 6B). The granting of the special hearing request is therefore deemed to constitute approval of the 5th Amended FDP, whether as shown on Ex. 6A or 6B, depending upon how DEPS resolves the forest conservation variance request.

VARIANCES

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. The large tract is irregularly shaped and is bisected by BGE power lines, factors noted in Case # 2013-0236-SPHA wherein Petitioners were previously granted variance relief. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to offer the amenities demanded by buyers in the current market. Finally, I find that the variance 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.

THEREFORE, IT IS ORDERED this 28th day of April, **2016**, 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 approve the 5th Amended Final Development Plan (FDP), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a minimum distance of 20 ft. from rear building face to rear property line in lieu of the required 30 ft. for Lot Numbers 25-26; 29-30; 31-32; and 39-43, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must provide a fence or shrubbery at the rear of the subject lots to prevent encroachment into the forest conservation areas.
3. Petitioners must comply with the ZAC comment submitted by DEPS, a copy of which is attached hereto.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln