

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(916 Oakfield Ct.)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Hawkins Manor Realty, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Ryan Homes Balto. N. Div.	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2016-0336-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 Hawkins Manor Realty, LLC, owner of the subject property and Ryan Homes, contract purchaser (“Petitioners”). Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to allow a minimum front yard setback from a public street right-of-way or property line of 12 ft. in lieu of the required 25 ft. for Lot Nos. 52, 66 and 91; and (2) to allow a minimum rear building face to rear property line setback of 10 ft. in lieu of 20 ft. for Lot Nos. 1-7, 11-37, 49-50, 52, 57-60, 73, 87 and 90. A site plan was marked as Petitioners’ Exhibit 1.

Aaron York of Ryan Homes and landscape architect Matthew Bishop appeared in support of the petition. David H. Karceski, Esq. represented the contract purchaser. No protestants or interested citizens attended the hearing. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS). The DPR requested screening on certain lots and a condition to that effect will be included in the order below. DEPS expressed concern with the variance originally requested for Lot 94, but the petition was amended to strike the request for that lot. The petition

was also amended, at the suggestion of the undersigned, to include a special hearing request for amendment of the Final Development Plan (FDP).

The subject property is approximately 41 acres and zoned DR 3.5 and CB. A development plan was approved in 2006 which permitted construction of 96 single-family dwellings on the property. The plan sat dormant during the economic downturn, but the project is now under construction. Mr. Bishop presented photos (Petitioners' Ex. No. 3) of the existing conditions at the site, and he explained that only the model home at the entrance to the community has been constructed at this time. Mr. York explained buyers in the current market prefer breakfast rooms or similar room additions to a basic single-family floorplan. The variances are sought to accommodate these add-on rooms, and no additional lots (beyond those shown on the approved development plan) are proposed or will result if the petition is granted.

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 property is irregularly shaped and roughly 25% of the site (10 acres) contains environmental features. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the improvements requested by buyers in the current housing 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. This is demonstrated by the lack of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this 14th day of September, 2016, 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.”) as follows: (1) to allow a minimum front yard setback from a public street right-of-way or property line of 12 ft. in lieu of the required 25 ft. for Lot Nos. 52, 66 and 91; and (2) to allow a minimum rear building face to rear property line setback of 10 ft. in lieu of 20 ft. for Lot Nos. 1-7, 11-37, 49-50, 52, 57-60, 73, 87 and 90, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Final Development Plan (FDP) of Greenfields at White Marsh be and is hereby amended to reflect the variance relief granted herein.

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 opaque fencing or screening at the rear of Lots 1 and 2, and the final landscape plan must be revised to reflect this change.

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

JEB: sln

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