

7IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(3805 Owings Mills Boulevard) *	OFFICE OF
2nd Election District	
4 th Council District *	ADMINISTRATIVE HEARINGS
3805 OMB Development, LLC	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Petitioner *	Case No. 2021-0214-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 3805 OMB Development, LLC, (“Petitioner”) for the property located at 3805 Owings Mills Blvd., Randallstown (the “Property”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”), §500.7 to confirm variances approved in Case No. 2012-00331-A for multi-family buildings:

- (1) To allow a minimum 23 ft. building setback to a public street right-of-way for an arterial road in lieu of the required 45 ft. building setback (25 ft. + 20 ft.) [Variance No. (2) in Case No.: 2012-00331-A];
- (2) To allow minimum 6 ft. setback from a building face to tract boundary in lieu of the required 40 ft. for front or rear and 30 ft. for side building face; (setbacks have been increased to 13/20 ft. for side building face and 23 ft. for front building face) [Variance No. (3) in Case No.: 2012-00331-A].
- (3) To allow a 5 ft. setback from a building face to edge of private road in lieu of the required 35 ft. [Variance No. (5) in Case No.: 2012-00331-A]; and
- (4) To allow a maximum building height of 70 ft. in lieu of the permitted 60 ft. [Variance No. (7) in Case No.: 2012-00331-A].

Variance relief was also requested from BCZR §1B01.2.B.2 and §504.2 and the Comprehensive Manual of Development Policies (“CMDP”), Division II, Section A, to allow a

maximum building length of 540 ft. in lieu of the maximum permitted 240 ft. (and previously approved building length of 265 ft.).

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Joseph Attar, Managing Partner of 3805 OMB Development, LLC appeared at the hearing in support of the Petition along with Christopher Pfaeffle, AIA, NCARB, architect with Baltimore City Studio and Parameter, Inc., and John Motsco, PE, of DS Thaler & Associates, LLC who prepared and sealed a redlined site plan (the “Site Plan”). (Pet. Ex. 1). Patricia Malone, Esquire and Venable, LLP represented the Petitioner. There were no Protestants or interested citizens in attendance at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) and Department of Planning (“DOP”) which agencies did not oppose the requested relief.

EVIDENCE

The Property is approximately 5.83 acres +/- and is part of a larger, 40 acre +/- tract of land (the “40 acre tract”). It is zoned Density Residential (DR-16). In 2012, the 40 acre tract was approved for development in Case No.: 02-163 for 4 multi-family buildings (232 units) and 5 single family dwellings under a Revised Plan approved by the Joint Subdivision Planning Committee on March 30, 1977 (“JSPC Plan”). (Pet. Ex. 2). The development was known as “Pikesville Apartments aka Schnaper Property.” As depicted on the aerial photograph, Ms. Malone explained that the 40 acre tract was bisected by the right of way of the future Owings Mills Blvd extension, the Metropolitan Blvd. and by underground utilities. (Pet. Ex. 5).

In the related zoning case, Case No.: 2012-0331-A, variance relief was granted for the 2 multi-family buildings on this Property including various building setbacks, building length and

building height. In this case, the setbacks approved in Case No.: 2012-331-A are being reduced and/or will remain the same here for the 2 multi-family buildings proposed on this Property. The originally approved multi-family buildings are being reconfigured with a separate tenant amenities building (the “amenities building”) which will now connect them. Ms. Malone added that if the amenities building were not constructed, the Petitioner would need a building to building setback variance as was previously requested in Case No.: 2012-0331-A [original Variance #4]. A rendering was provided to show the front view of the entire project. (Pet. Ex. 9). A comparison rendering of the originally approved buildings without the connecting amenities building, and the proposed reconfigured buildings was provided. The original configuration was 2 ‘L’-shaped buildings. (Pet. Ex. 6).

The original setback Variances [(2), (5) and (7)] as approved in Case No. 2012-0331-A, will not change with the new configuration of the buildings. However, given the repositioning of the buildings, the original setback Variance (3) for the front setback of Wing ‘A’ (formerly named Building ‘A’) will increase from the approved 6 ft. to 23 ft. in lieu of the required 40 ft. Similarly, the side setback for Wing ‘A’ will increase from 6 ft. to 20 ft., and the side setback for Wing ‘B’ (formerly named Building ‘B’) from 6 ft. to 13 ft. (Pet. Ex. 1). Accordingly, Petitioner seeks confirmation in regard to original Variance (2), (3), (5) and (7).

Due to the reconfiguration of the buildings, a new variance is needed from BCZR, §504.2 and §1B01.2.B.2 and CMDP, Division II, Section A to allow a maximum building length of 540 ft in lieu of the maximum permitted 240 ft. (previously approved building length of 265 ft.). The proposed building elevation width of 540 ft. is shown on the Site Plan on the rear yard. At the request of the Office of Zoning Review (OZR), length is measured from the farthest points of both buildings as shown on the Site Plan. (Pet. Ex. 1). Mr. Motsco, who was accepted as an expert in

civil engineering (Pet. Ex. 4) highlighted that the purpose of the total building length restriction is avoid the view of a long building expanse. However, in this case, the longest portion is measured in the rear yard across the Forest Buffer and Forest Conservation areas.

Mr. Motsco testified that the same 120 apartment units are being proposed here. He opined that the Property is unique as the north facing/rear yard is constrained by environmental features including a Forest Buffer and Forest Conservation Easement. (Pet. Ex. 1). It is also unique due to its irregular shape. The combination of the environmental factors and shape reduce the developable acreage to the area shown on the Site Plan. (Pet. Ex. 1).

Christopher Pfaeffle, AIA, NCARB, was accepted as an expert in architecture. (Pet. Ex. 7). He prepared perspective building renderings. (Pet. Exs. 8, 9). The proposed apartment buildings seek a higher end quality of design. The market supports apartments which offer amenities. As depicted in the elevation rendering, Mr. Pfaeffle explained that an open air bridge will be located on the second floor. (Pet. Ex. 9).

SPECIAL HEARING

A Petition for relief under BCZR §500.7 is in the nature of a request for a declaratory judgment. *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). And, “the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations.” *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016). In the instant case, the Petitioner seeks confirmation of the variances previously approved in Case No.: 2012-0331-A with no change to the setbacks for Variances (2), (5) and (7). In regard to Variance (3), the Petitioner is increasing the setbacks thereby essentially reducing the extent of the Variance relief for both the front and side of Wing ‘A’ and for the side of ‘Wing B’. This

increase in setbacks was driven by the reconfiguration of the buildings as well as the addition of the amenities building. In summary, I find that the final proposed product is much better design for the remaining developable area of the Property given that most of it is consumed by environmental areas in the rear and the required parking in front. In regard to uniqueness, the larger 40 acre tract, which includes this Property, was already found to be unique and the uniqueness in Case No.: 2012-0331-A. Therefore, under the doctrine of collateral estoppel, that fact has already been decided in favor of the Petitioner. That fact notwithstanding, I also find that the Property is unique in terms of both the shape and extensive environmental features. Additionally, I find that this uniqueness creates a practical difficulty and unreasonable hardship for the Petitioner in terms of constructing the previously approved apartment buildings, albeit in a slightly different configuration, within the only remaining developable area. I find that the relief requested is within the spirit and intent of the BCZR.

VARIANCE

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).

As described above, the Property is unique. The Variance request for the total building length is due to the total distance across the rear yard of the Property. The total distance has increased only due to the repositioning of the buildings at a slightly different angle. I accept Mr. Motsco's explanation that the intent of the restriction on a total building length in the BCZR is to prevent a long, unattractive expanse of buildings. In this case, the buildings are set at different

angles preventing one long stretch of buildings and will also be separated from one another while connected to the amenities building. (Pet. Ex. 9). Additionally, the view of the longest part can only be seen from the environmental area which is not usable space. I find that if the Variance were denied, the Petitioner would suffer a practical difficulty and unreasonable hardship because it would be unable to construct the proposed apartment buildings which were already approved. Again, I find that the variance is within the spirit and intent of the BCZR and that it will not harm the public health, safety or welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED this 4th day of **October 2021**, by this Administrative Law Judge that the Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”), §500.7 to confirm variances approved in Case No. 2012-00331-A for multi-family buildings:

- (1) To allow a minimum 23 ft. building setback to a public street right-of-way for an arterial road in lieu of the required 45 ft. building setback (25 ft. + 20 ft.) [Variance No. (2) in Case No.: 2012-00331-A];
- (2) To allow minimum 6 ft. setback from a building face to tract boundary in lieu of the required 40 ft. for front or rear and 30 ft. for side building face; (setbacks have been increased to 13/20 ft. for side building face and 23 ft. for front building face) [Variance No. (3) in Case No.: 2012-00331-A].
- (3) To allow a 5 ft. setback from a building face to edge of private road in lieu of the required 35 ft. [Variance No. (5) in Case No.: 2012-00331-A]; and
- (4) To allow a maximum building height of 70 ft. in lieu of the permitted 60 ft. [Variance No. (7) in Case No.: 2012-00331-A].

be, and they are hereby, **GRANTED**.

IT IS FURTHER ORDERED that the Variance from BCZR §§1B01.2.B.2, 504.2 and the Comprehensive Manual of Development Policies (“CMDP”), Division II, Section A, to allow a

maximum building length of 540 ft. in lieu of the maximum permitted 240 ft. (and previously approved building length of 265 ft.) are hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is 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, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must comply with the DEPS ZAC comment, a copy of which is attached hereto and make a part thereof.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm