

IN THE MATTER OF:	*	BEFORE THE
SECURITY BOULEVARD	*	BOARD OF APPEALS OF
VENTURES, II, LLC, Legal Owner,	*	BALTIMORE COUNTY
US HOME CORPORATION,	*	Case No.: 16-109-A
Developer/Petitioner;	*	and CBA-16-038
7726 Johnnycake Road	*	
1 st Election District; 1 st Council District	*	
* * * * *		

OPINION

This case comes to the Board of Appeals with a unique procedural history. Security Boulevard Ventures, II, LLC, and US Home Corporation submitted for approval of a Development Plan for a community to be known as “Patapsco Glen.” Following the submission of the Development Plan, Petitioners also sought variance relief for numerous aspects of the Development Plan and also filed an application for a Special Variance regarding certain specimen trees within a forest conservation area. A combined hearing was held in front of the Administrative Law Judge on January 22, 2016.

Numerous representatives from various Baltimore County agencies attended the hearing. Several members of the Greater Patapsco Community Association, Inc. and Cathy Wolfson (“Protestants”) appeared at the hearing in opposition to certain parts of the project. At the time, the Petitioner proposed 368 single-family attached dwellings (townhouses) over approximately 58 acres. The subject property was overwhelmingly zoned DR 10.5 (10.5 residential units/acre), with approximately 3 acres out of the 58 within the BM-IM zone (Business Major with an Industrial Major District Overlay). Only a portion of the 58-acre tract is able to be developed due to topographical and environment issues.

On February 24, 2016, the ALJ issued the Combined Development Plan and Zoning Opinion & Order and disapproved of the redlined Development Plan, denied the Petition for Variance, but granted the Petition for Special Variance. Following the filing of a Motion for Reconsideration by Petitioner, on March 28, 2016, the ALJ issued his Order on Motion for Reconsideration and, again, denied the Petition for Variance and granted the Petition for Special Variance. The ALJ, however, approved of the Patapsco Glen Development Plan, subject to two conditions: (1) the granting of the variance relief in Case No. 2016-0109 (which the ALJ denied); or (2) resubmission to Baltimore County of a development plan for the site that complies with the development regulations and does not require variance relief. Protestants appealed the Development Plan decision and Petitioner appealed the denial of the variance relief.

Prior to the hearing in front of the Board of Appeals, Petitioner met with Protestants to discuss their concerns. In particular, Protestants reiterated the importance of the Patapsco/Granite Area Community Plan and its emphasis on the protection of land designated in this plan as Resource Preservation Area and the close proximity of houses to adjacent land zoned RC-6 (Rural Conservation and Residential).

Petitioner agreed to modify the planned layout of Patapsco Glen so that the distance from the houses to the land zoned RC-6 increased, the effect of which caused a reduction in the planned density from 368 units to 358, and the need for Petitioner to modify the Development Plan as well as the Petition for Variance. As another consequence of this change, Protestants withdrew their opposition to the Development Plan approval as long as the modifications remained consistent with the site plan shown to Protestants. This agreement was reduced to writing and was signed by the parties on December 5, 2016 (BOA Exhibit 3).

Therefore, at the time of the Board of Appeals hearing, the appeal regarding the Development Plan was no longer at issue. The appeal, at the time of the Board of Appeals hearing, solely concerned the denial of the Petition for Variance, which had been revised since the ALJ's denial.

With that background in mind, the Board conducted a hearing on March 9, 2017. Petitioner was represented by Patricia A. Malone, Esquire. Kathleen Skullney and Cathy Wolfson appeared for Protestants but did not take any position regarding the variance relief requested or otherwise participate in the hearing.

Petitioner presented numerous exhibits and a couple of witnesses regarding its request for variance relief. In particular, Petitioner presented Zachary Lette, a landscape architect with additional expertise in land planning and community planning, and David Thaler, an expert in engineering as well as in zoning and development regulations.

Mr. Lette reviewed the topographical and environmental features that constrained development of the subject property, identifying wetlands at the bottom of ravines, vegetation, specimen trees, and subsurface rock as conditions that precluded or hindered full development of the site and/or that influenced the plan submitted. (See, BOA Exhibits 5-7).

Mr. Thaler testified that the property has a bow-tie shape. Required setbacks and the presence of specimen trees further restrict the pinch point within the bowtie shape. Mr. Thaler identified forest buffers, an area of designated Baltimore County Recreational Greenway, the presence of a gas pipeline, and subsurface rock as conditions that make, in his opinion, this property the "most-constrained DR-10.5-zoned property" he had seen. As to the subsurface rock in particular, he noted that the project was designed around the rock without the need for blasting.

The presence of the conditions identified by Mr. Lette and Mr. Thaler necessitated the variance requests. By way of example, to move forward and attempt to utilize the permitted density, the project requires a variance from the mandated maximum of six units per townhouse group (Baltimore County Zoning Regulation (“BCZR”) § 504.2 and Comprehensive Manual of Development Policies (“CMDP”), Division 2, Section A) to seven and, in some cases, eight units.

The other variance requests in the Refined Zoning Plan are:

1. Variance from BCZR §1B01.2.C.1.c and CMDP to allow a minimum building face to property line and/or to public street right-of-way setback of 5 feet in lieu of the required 15 feet (standard townhouse)/25 feet (garage/townhouse);
2. Variance from BCZR § 1B01.2.C.1.c and CMDP to allow a minimum rear building face to property line and/or to public street right-of-way setback of 12 feet in lieu of the required 30 feet/50 feet;
3. Variance from BCZR §1B01.2.C.1.c and CMDP to allow a minimum side building face to side building face and/or to public street right-of-way setback of 4 feet in lieu of the required 25 feet;
4. Variance from BCZR §1B01.2.C.1.c and CMDP to allow a minimum building face to tract boundary setback of 28 feet in lieu of the required 30 feet;
5. Variance from BCZR §301.1.A to allow a deck (open porch) to extend into the minimum required rear yard more than the allowed 25% (requesting to have a minimum 10 foot deep deck in rear yard);
6. Variance from BCZR §1B01.B.1 and CMDP to allow a reduction in the required Residential Transition Area (RTA) to allow units to be constructed as close as 41 feet from the tract boundary; related grading, clearing, and infrastructure installation within the buffer, and to exceed the maximum height of 35 feet within the 100 feet of the tract boundary; and
7. Variance from BCZR § 504.2 and CMDP to allow private rear yard areas of less than 500 square feet.

To be clear, not all 358 proposed units required each variance. Rather, the variance requests are specific to certain units and groups as indicated in Petitioner’s Exhibit No. 4 (see, in particular, Variance Matrix and Refined Zoning Plan). As such, by way of example, there are groups of

townhouses that consist of six or fewer units and groups that require variance relief to allow seven or eight units. Similarly, only 10 out of the 358 units require a variance from the RTA regulations.

Petitioner also presented evidence regarding the zoning and planning history of the general area. Petitioner pointed to several actions undertaken by the County Council that reveal that this general area (Woodlawn) was a targeted growth area, namely: (1) the area containing the subject property was rezoned from RC-6 to DR 10.5, while nearby property was rezoned to accommodate economic development; (2) the Urban-Rural Demarcation Line and Master Water and Sewer Plan were changed to provide for water and sewer connections; (3) it was considered “General Urban” in the County *Master Plan 2020*; (4) it was to be considered a “Priority Funding Area” to help accommodate population and employment growth; and (5) the commercial and residential development of the Woodlawn area was considered to be important for not only economic growth generally, but also to support the Red Line Transit Project, with its western terminus to be located approximately one mile away from the subject property.

DECISION

As is well established, the general rule that guides this analysis is “the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.” Trinity Assembly of God of Baltimore City v. People’s Counsel, 407 Md. 53, 79; 962 A.2d 404, 419 (2008), citing Cromwell v. Ward, 102 Md. App. 691, 703; 651 A.2d 424, 430 (1995).

Baltimore County Zoning Regulation § 307.1 governs requests for variance relief and it provides:

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance

request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification.[1] Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

The “special circumstances or conditions [that] exist that are peculiar to the land or structure,” commonly referred to as a subject property’s “uniqueness,” do not include within its scope the extent of improvements upon the property. North v. St. Mary’s County, 99 Md. App. 502, 514; 638 A.2d 1175, 1181 (1994). Rather, the property’s uniqueness, for zoning purposes, “requires that the subject property have an inherent characteristic not shared by other properties in the area,” such as the property’s “shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” Id. If, and once, uniqueness is established, Petitioner must satisfy the prong of practical difficulty¹ to advance their claim for relief, and to do so Petitioner must prove:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;

¹ As is relevant herein, changes to the character of the neighborhood are considered less drastic with area variances than with use variances, and therefore, the less stringent “practical difficulties” standard applies to area variances, while the “undue hardship” standard applies to use variances. Montgomery County v. Rotwein, 169 Md. App. 716; 906 A.2d 959 (2006).

2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and

3. Whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Trinity Assembly, 407 Md. at 83-84; 962 A.2d at 422.

Based on the evidence in the record, the only conclusion to draw is that subject property is unique. There was more than sufficient evidence regarding this property's "shape, topography, subsurface condition, environmental factors," etc., as identified by the Maryland Court of Appeals in the North case as features to analyze a property's uniqueness. All of the issues identified factored into the design, density, and layout within the portion of the property that is developable and precluded full development of the site. Petitioner's expert, Mr. Thaler, no stranger to the Board of Appeals, testified that it was the "most-constrained DR 10.5 property" of which he was aware.

Moreover, the zoning and community planning history help demonstrate why this particular site has features that create unique conditions and circumstances. The Patapsco/Granite Area Community Plan (BOA Exhibit No. 10), which concerns property adjacent to and in the vicinity of the site, (adopted by the County in 1998) identifies a desire to protect natural vegetation and preservation of attractive natural features. The Community Plan notes that the general area has "severe environmental constraints" and "severe topography" issues. Since the Community Plan was written, the zoning for the adjacent area and subject property was changed to RC-6 in 2000 and then the subject property was changed to DR 10.5 in 2008. As noted in the ALJ's Order, the desire to preserve the rural character of the adjacent area prompted the opposition from Protestants

prior to subsequent changes to the site plan that ameliorated, or at least significantly lessened, those concerns.

The inherent conflict between the stark contrast in adjacent zoning districts, the Community preservation goals, and topographical and environmental issues all combine to lead to the inescapable conclusion, Petitioner has presented more than sufficient evidence illustrating the uniqueness of this particular property and, without opposition, this Board finds that the site is unique and the application of the zoning requirements of DR 10.5 have a disproportionate impact upon this property.

As noted above, not all units require the same variance relief, and in fact, some units do not require any relief. Petitioner specified which units and which groupings of units required particularized relief. The conditions outlined above affect parts of the site in varying ways and in varying combinations. Moreover, Petitioners have proved that the same conditions that lead to the conclusion that the site, in general, is unique, also require the same particularized finding for the individual units and/or groupings affected by one or more of those conditions, as specified on Petitioners' Exhibits No. 4-7. To be clear, the uniqueness of one part of a property does not necessarily extend to other parts of the property. In this case, Petitioners have identified the conditions experienced at different parts of the property. In doing so, Petitioners have presented sufficient evidence that establishes that certain characteristics render parts of the property unique for one or more reasons and therefore, have gone beyond a general showing for the site to justify an analysis practical difficulty to develop each part of the property, as relevant. In turn, Petitioners have carefully targeted the requested variance relief to match the varying conditions found. In other words, if, for example, a setback variance was required for several units because of a forest

buffer, Petitioners have not sought to have that setback variance applicable to all units. Petitioner requested that particular relief for only the units affected by the relevant conditions.

As illustrated throughout this opinion, the features and characteristics of this property result in a practical difficulty in trying to develop the Property for a permitted use in the absence of variance relief. Approximately 43% of the property is undevelopable. A substantial part of the remainder requires some variance relief in order to develop it consistent with the permitted uses within a DR 10.5 zone and in furtherance of the overall plan and objectives for the area.

Strict application of area, setbacks, frontage, height, bulk or density requirements would render this property almost entirely undevelopable. This Board takes into account the resolution of issues between the Protestants below and Petitioners that prompted the withdrawal of their opposition. With all evidence in favor of the Petitioners and no opposition, and a particular desire to effectuate the resolution of issues with the opposition below, the Board finds that substantial justice, to both, Petitioners and other area owners, will be achieved by granting the variance relief requested. Finally, as reflected above, because Petitioners matched the variance relief to the conditions experienced in a hyperlocalized manner relative to the property as a whole, the spirit of the ordinances at issue will be observed and public safety and welfare secured.

For these reasons, Petitioners have proved and, therefore, the Board of Appeals finds that the property is unique, generally and specifically and that Petitioners will face significant practical difficulty in the absence of the variance relief sought. Accordingly, Petitioners variance requests are granted.

ORDER

THEREFORE, FOR THE REASONS STATED ABOVE, IT IS THIS 19th day
of July, 2017 by the Board of Appeals of Baltimore County

ORDERED that the Petition for Variance is **GRANTED** and the following requested
variances are **APPROVED** in accordance with Petitioners Ex No 4, Variance Matrix and Refined
Zoning Plan:

1. Variance from BCZR §1B01.2.C.1.c and CMDP to allow a minimum building face to property line and/or to public street right-of-way setback of 5 feet in lieu of the required 15 feet (standard townhouse)/25 feet (garage/townhouse);
2. Variance from BCZR § 1B01.2.C.1.c and CMDP to allow a minimum rear building face to property line and/or to public street right-of-way setback of 12 feet in lieu of the required 30 feet/50 feet;
3. Variance from BCZR §1B01.2.C.1.c and CMDP to allow a minimum side building face to side building face and/or to public street right-of-way setback of 4 feet in lieu of the required 25 feet;
4. Variance from BCZR §1B01.2.C.1.c and CMDP to allow a minimum building face to tract boundary setback of 28 feet in lieu of the required 30 feet;
5. Variance (Modification of Standard) from BCZR Section 504.2 and CMDP to allow 7 and 8 townhouse units in a group in lieu of the maximum permitted 6 townhouse units in a group;
6. Variance from BCZR §301.1.A to allow a deck (open porch) to extend into the minimum required rear yard more than the allowed 25% (requesting to have a minimum 10 foot deep deck in rear yard);
7. Variance from BCZR §1B01.B.1 and CMDP to allow a reduction in the required Residential Transition Area (RTA) to allow units to be constructed as close as 41 feet from the tract boundary; related grading, clearing, and infrastructure installation within the buffer, and to exceed the maximum height of 35 feet within the 100 feet of the tract boundary; and
8. Variance from BCZR § 504.2 and CMDP to allow private rear yard areas of less than 500 square feet.

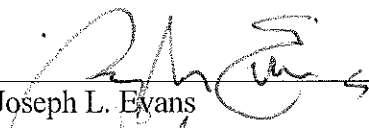
In the matter of: Security Boulevard Ventures, II, LLC – Legal Owner
U.S. Home Corporation – Developer/Petitioner (aka Patapsco Glen)
Case No: 16-109-A and CBA-16-038

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

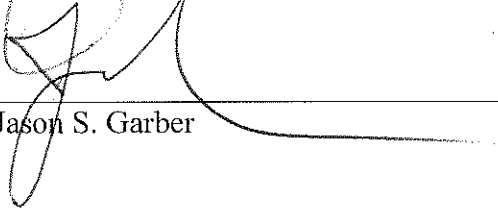
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Chairman



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July 19, 2017

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RE: In the Matter of: *Security Boulevard Ventures, II, LLC – Legal Owner*
US Home Corporation – Developer/Petitioner
(a/k/a Patapsco Glen)
Case Nos.: 16-109-A and CBA-16-038

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Security Boulevard Ventures, II, LLC
Joseph Fortino/US Home Corporation
Richard E. Matz, P.E./Colbert, Matz & Rosenfelt, Inc.
Andrea Van Arsdale, Director/Department of Planning
Lawrence Stahl, Managing Administrative Law Judge
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
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Cathy Wolfson/Greater Patapsco Comm. Assn.
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