

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
N side of Nine Mile Circle, 121 feet NE	*	DEPUTY ZONING
of Frederick Road		
1 st Election District	*	COMMISSIONER
1 st Councilmanic District		
(2804-2828 Nine Mile Circle)	*	FOR BALTIMORE COUNTY
Condominium Mill Homes at Nine Mile Circle		
<i>Petitioner</i>	*	Case No. 2009-0213-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Brian Dolan, president of the Council of the Unit Owners of the Condominium Mill Homes at Nine Mile Circle, the legal owner of the subject property. The Petitions as filed seek Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To determine that altering a condominium regime into fee simple lots does not qualify as a subdivision under the Baltimore County Code; and
- To approve allowing the existing units to continue to utilize the parking layout as shown on the plan.

Variance relief is also requested as follows:

- From Section 1B01.2.C.1.b of the B.C.Z.R. to allow a minimum front building setback to right-of-way or property line of 16 feet in lieu of the required 25 feet; and
- From Section 1B01.2.C.1.b of the B.C.Z.R. to allow a minimum side building face setback to tract boundary line of 0 feet in lieu of the required 15 feet; and
- From Section 1B01.2.C.1.b of the B.C.Z.R. to allow a side building face to side building face setback of 0 feet in lieu of 16 feet if less than 16 feet in height and/or 20 feet if greater than 20 feet in height; and
- From Section 1B01.2.C.1.b of the B.C.Z.R. to allow a minimum rear building face to property line setback of 0 feet in lieu of the required 30 feet; and

- From Sections 1B01.2.C.1.b and 301.1 of the B.C.Z.R. to allow a minimum of 8 feet in lieu of 25 feet, and 18 feet 9 inches for open porches to right-of-way setback as indicated.

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief was Brian P. Dolan, owner of a dwelling known as 2810 Nine Mile Circle and president of the Condo at Nine Mile Condominium Association. Also present were two other owners/residents at the subject property; namely, Joseph D'Addo and Susan A. Allen (hereinafter "Petitioners"). Lawrence E. Schmidt, Esquire of Gildea & Schmidt, LLC, represented Petitioners. Also appearing and testifying in support of the Petitions was David S. Thaler, principal of D.S. Thaler and Associates, Inc., the engineering and architectural firm that prepared the site plan. Also present on behalf of Baltimore County was Donald Rascoe, Deputy Director of the Department of Permits and Development Management. There were no Protestants or other interested persons present at the hearing.

Testimony and evidence offered revealed that the subject property is an irregular-shaped property located adjacent to Frederick Road (MD Route 144), near the Baltimore County/Howard County line (Patapsco River) in southwestern Baltimore County. The property is near the historic mill community known as Oella. The property is approximately 4.67 acres, split-zoned D.R.1 and D.R.3.5. The predominant zoning of the property is D.R.3.5. The property is presently improved with 11 single-family dwellings. As shown on the site plan, these dwellings are grouped near the front portion of the site, immediately adjacent to Nine Mile Circle, a public road that provides vehicular access to this community. Nine Mile Circle essentially serves as a semi-circular driveway, in that it enters into the property from Frederick Road to the east, runs across the front of the dwellings, then reconnects to Frederick Road to the west. The topography of the property is

significant, in that the grade significantly rises from the front adjacent to Nine Mile Circle. The rear of the property is at a higher elevation and is nearly entirely wooded and not developed. The grade and environmental features of the rear of the property make it unsuitable for development.

The history of the property is also significant. As is the case with many old mill towns in Baltimore County, the subject property was developed as housing for mill workers during the 19th century. A textile mill known as Grey's Mill was located nearby. As mentioned above, there are 11 single-family dwellings on the subject property. Some are single-family detached structures and others are side-by-side attached units. Many years ago, these houses were typically occupied by workers at the textile mill.

In 1999, after the mill had long since closed, the entire tract was acquired and proposed for redevelopment. Given the historic character of the site and constraints associated with the property, this redevelopment was approved as a condominium regime. Significantly, the redevelopment of the property was not subject to the development review regulations for Baltimore County contained in B.C.C. Article 32, Title 4. Nonetheless, a plat was recorded in the Land Records for Baltimore County on April 8, 1999 at Liber 22, Foilo 76 establishing the condominium regime for these 11 units. As Mr. Thaler explained at the hearing, this redevelopment was actually a "landominium," in that the individual residents own not only their individual building unit, but a small area of real property surrounding each unit as well.

Following this approval, the houses were ultimately individually sold and occupied. The current residents formed a homeowners' association and through the instant petitions are seeking approval to allow the dissolution of the condominium regime and the creation of a community made of in-fee lots. As indicated by Petitioners present at the hearing, apparently issues related to the acquisition and pricing of homeowners' insurance and other complications have necessitated

this request. In order to accommodate this conversion of the property from a condominium regime to a single-family, in-fee community, the instant Petitions were filed.

Considering first the Petition for Special Hearing, Petitioners' counsel, Mr. Schmidt, moved for an amendment of that Petition in open hearing. Specifically, that portion of the Special Hearing requesting a finding that the alteration of the condominium regime does not qualify as a subdivision under the Baltimore County Code was withdrawn. In lieu thereof, Mr. Schmidt indicated that Petitioners would seek a waiver of the application of the development review regulations and process, pursuant to B.C.C. Section 32-4-107(b). Pursuant thereto, the Director of the Department of Permits and Development Management (rather than the Zoning Commissioner) has the authority to waive the application of the development regulations in certain instances. A waiver request is to be made with Director Timothy Kotroco under the authority provided by this section of the B.C.C.

Although the authority to grant that waiver ultimately rests with Director Kotroco, in my view, the waiver appears appropriate and I recommend that it be granted. There is no new development, per se, in that no new construction or building is proposed. Rather, as explained above, Petitioners only seek to convert the existing community into an in-fee community. Requiring the members of this community to bear the time and expense associated with, and delay in proceeding through, the development review process seems inappropriate. Nonetheless, in view of Petitioners' election to proceed via a waiver request under B.C.C. Section 32-4-107(b), I will approve the amendment of the Petition and decline to issue any ruling on that question as presented. In open hearing, Mr. Rascoe consented to proceeding in this fashion and indicated that this process was appropriate.

As to the other relief requested under the Petition for Special Hearing, Petitioner seeks approval to allow the existing units to continue to utilize the parking layout as shown on the site plan. In this regard, the semi-circular public road described above (Nine Mile Circle) provides access to the site from Frederick Road. This road accommodates parking for the units and essentially serves as a semi-circular driveway for the community. Although parking spaces are not specifically designated for the proposed in-fee lots, Nine Mile Circle provides appropriate access and apparently the arrangement has worked well for many years. Under the circumstances, I am persuaded to grant the Special Hearing relief requested, as it is most practical and appropriate to continue the current arrangement.

Turning next to the Petition for Variance, there are five variances requested. As is well settled, in order for variance relief to be approved, Petitioner must establish that the subject property is unique and that this unique factor drives the need for a variance request (*See, Cromwell v. Ward* 102 Md. App. 691 (1995) and *People's Counsel v. Trinity Church* 407 Md. 53, 962 A.2d 404 (2008)). There are a number of factors which support a finding of uniqueness in this case. First, the property's irregular shape is unique and unlike any property in the area. Moreover, the significant topography and environmental constraints (which limit the allowable building area) drive the need for the variances. Most significant is the historic character associated with the property. Several of the homes are 150 years old or more and as a historic mill town, the entire area has historic significance. For all of the above reasons, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests, and therefore, find the property to be unique in a zoning sense.

Insofar as the requirement for a finding of practical difficulty, it is to be noted that all of the variances seek relief for existing conditions. There is no new construction proposed and the

variances seek to legitimize the present location of the units. Generally, the variances seek relief for setback requirements from the front, side and rear property lines. Some of the units meet the setback requirements, while others do not provide the necessary setbacks. The details of each variance as applied to each unit are shown in detail on the site plan. Not every unit requires a variance; however, relief is requested for many. In short, the need for the variances is caused by the layout of the existing community, as well as the shape and topographical features of the subject site. Adherence to the setback regulations would necessitate razing some of the historic structures. As such, I am easily persuaded that the requested variance relief should be granted in this case.

In sum, I am persuaded that the Petition for Variance requests should be granted, and that the Special Hearing relief should be approved to accommodate the existing parking arrangement. I find that Petitioners have met the requirements contained in Sections 307 and 500.7 of the B.C.Z.R. It is also significant that the requested relief is without opposition. In this regard, Petitioners produced a letter of support from the nearest community association, and no one appeared in opposition. Mr. Dolan indicated that he had also spoken with the community group for the Greater Oella Community and that organization was supportive of his request. This is an umbrella group for community organizations in the area. A series of photographs were also presented at the hearing and confirm the historic character associated with this community, which supports the relief requested. Moreover, as noted above, Mr. Rascoe supports the procedural process suggested in this case.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioners' special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 9th day of June, 2009 that Petitioners' Special Hearing request to determine that altering a condominium regime into fee simple lots does not qualify as a subdivision under the Baltimore County Code be and is hereby WITHDRAWN and thereby DISMISSED; and

IT IS FURTHER ORDERED that Petitioners' Special Hearing request to approve allowing the existing units to continue to utilize the parking layout as shown on the site plan accepted into evidence as Petitioners' Exhibit 1 be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' Variance requests as follows:

- From Section 1B01.2.C.1.b of the B.C.Z.R. to allow a minimum front building setback to right-of-way or property line of 16 feet in lieu of the required 25 feet; and
- From Section 1B01.2.C.1.b of the B.C.Z.R. to allow a minimum side building face setback to tract boundary line of 0 feet in lieu of the required 15 feet; and
- From Section 1B01.2.C.1.b of the B.C.Z.R. to allow a side building face to side building face setback of 0 feet in lieu of 16 feet if less than 16 feet in height and/or 20 feet if greater than 20 feet in height; and
- From Section 1B01.2.C.1.b of the B.C.Z.R. to allow a minimum rear building face to property line setback of 0 feet in lieu of the required 30 feet; and
- From Section 1B01.2.C.1.b of the B.C.Z.R. to allow a minimum of 8 feet in lieu of 25 feet and 18'9 feet for open porches to right-of-way setback as indicated,

be and are hereby GRANTED, subject to the following:

1. Petitioners are advised that they may apply for any required building 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 the 30-day appeal period from the date of 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.
2. As per DEPRM Zoning Advisory Committee (ZAC) comment dated April 13, 2009, development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz