

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
E side of Pleasant Hill Road; 5 feet E of	*	DEPUTY ZONING
the c/l of Run Crossing Road		
4 th Election District	*	COMMISSIONER
4 th Councilmanic District		
(Pleasant Hill Road)	*	FOR BALTIMORE COUNTY
Pleasant Hill Development	*	
Associates II, LLC		
<i>Petitioner</i>	*	Case No. 2010-0022-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 Sidney Emmer, Authorized Agent, on behalf of the legal owner of the subject property, Pleasant Hill Development Associates II, LLC. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To approve a 20 foot side building face to side building face setback for townhouses in lieu of the 25 feet required by Section 504.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Division II, Section A, pp. 27-30, of the Comprehensive Manual of Development Policies (“C.M.D.P.”); and
- To approve 7 townhouse units in a row in lieu of the maximum 6 units in a row permitted by Section 504.2 of the B.C.Z.R. and Division II, Section A, pp. 27-30, of the C.M.D.P.

Petitioner is also requesting Variance relief from Section 307.1 of the B.C.Z.R. to allow residential uses (townhouses) in the O.T. Zone with a minimum height of 30 feet in lieu of the minimum height of 52 feet required by Section 209.4.E of the B.C.Z.R. The subject property

and requested relief are more fully described on the revised site plan¹ that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing as representatives of Petitioner Pleasant Hill Development Associates, II, LLC were Sidney Emmer and Charlie Nass with Sidney Emmer Builders, Inc. Robert A. Hoffman, Esquire and Patricia A. Malone, Esquire appeared as attorneys on behalf of Petitioner. Also appearing in support of the requested relief were David Thaler, professional engineer and land planner, and Stacey McArthur, landscape architect, both with D.S. Thaler & Associates, Inc. Area residents Alan McLeod and James and Kathy Thomas also appeared at the hearing and provided input. There were no Protestants or other interested citizens in attendance.

Testimony and evidence offered revealed that the subject property is located on the east side of Pleasant Hill Road, opposite its intersection with Run Crossing Drive, and is zoned predominantly O.T. (10.2± acres), with a small amount of M.L. zoning (0.06± acres). Petitioner is requesting the aforementioned zoning relief to allow for development of the property with 70 townhouse units as an alternate proposal to the prior approved Run Crossing Development Plan, which reflected development of the property with 110 multi-family units.

Testifying in support of the requested relief was David Thaler, Petitioner's consulting engineer. Mr. Thaler first provided a background of the prior development proposal and explained that in Case No. IV-665 and related zoning Case No. 2006-0571-SPH, the Hearing Officer/Zoning Commissioner, William J. Wiseman, III, approved a development plan to construct 10 multi-family buildings, housing a total of 110 dwelling units. At that time, Special Hearing relief was also granted, confirming that the O.T. Zone permits residential uses by right

¹ Also identified as the "Alternate Plat to Accompany Zoning Petition."

without specific limitation on density. These approvals are more particularly described on the original Run Crossing Development Plan, which was marked and accepted into evidence as Petitioner's Exhibit 2. In order to respond to changing market conditions, Petitioner now seeks to have an alternate development proposal approved for the property to develop the site with 70 townhouse units instead of the 110 multi-family units previously approved. Petitioner desires the option to proceed either under the plan approved in Case Nos. IV-665 and 2006-0571-SPH or in accordance with this new development proposal.

As Mr. Thaler described, Petitioner is seeking a Modifications of Standards for reduced side building face to side building face setbacks between townhouse units of 20 feet in lieu of the required 25 feet; moreover, for two groupings of townhouses, Petitioner is requesting approval to have seven units in a row in lieu of the maximum permitted six units in row. As indicated in the C.M.D.P., the Zoning Commissioner has the ability to approve these two elements of relief by way of a Modification of Standards. As shown on the revised site plan, the property contains a significant area of environmentally constrained area and/or area reserved for Baltimore County's Recreational Greenway along the eastern side of the site. Additionally, the property is split-zoned, with M.L. zoning on the northwestern corner of the site, preventing placement of any townhouses within this area, as residential uses are not permitted in the M.L. Zone. Hence, the developable area, particularly for residential development, is effectively limited to the interior portion of the site, forcing the clustering of units. Mr. Thaler also explained that the requested relief is internal to the site, and all required setbacks to adjacent properties would be maintained. In his opinion, the unusual configuration of this site justifies the requested special hearing and the granting of the Modifications of Standards.

Mr. Thaler next discussed the requested variance relief, which pertains to the height of the proposed townhouses. The O.T. Zone permits residential uses, but the zone contains an unusual requirement regarding the height of such residential uses. Section 209.4.E of the B.C.Z.R. requires that residential uses in the O.T. Zone have a “minimum” height of 52 feet. As Mr. Thaler testified, this height requirement can be explained by looking at the findings and legislative policy of the O.T. Zone, as outlined in Sections 209.1 and 209.2 of the B.C.Z.R. These sections demonstrate an intention by the Baltimore County Council to have properties within designated growth areas -- such as the Owings Mills Growth Area -- and located in close proximity to town centers, be developed with “office, high technology, and high density residential development.” The minimum height requirement, therefore, was designed to ensure that residential development on O.T. zoned properties would be “high density.”

As Mr. Thaler explained, however, these policies would not be served by requiring Petitioner’s strict adherence to the Zone’s minimum height requirements, particularly given the context of the site in relation to the surrounding area. To demonstrate this, Mr. Thaler introduced an aerial photograph that was marked and accepted into evidence as Petitioner’s Exhibit 3. The subject property is physically removed from the Owings Mills Town Center, which is located nearly 3,000 feet to the southeast. Consequently, the property does not act as the high-density hub that was envisioned when the O.T. Zone was created. Rather, the property serves as a transition area between single-family homes to the north and the higher density commercial and residential development to the south. The aerial photograph illustrates this transition, showing a group of single-family homes just north of the site and uses of increasing intensity moving further south. The Compatibility Report marked and accepted into evidence as

Petitioner's Exhibit 4 provides further insight into the actual development of the surrounding "neighborhood" and will be expounded on below.

As to the requested variances, Mr. Thaler testified that the aforementioned conditions present unique circumstances with regard to the development of the property and strict adherence to the requirements of the B.C.Z.R. would create a practical difficulty for Petitioner given its inability to market the property to date for higher intensity residential uses, such as the multi-family units approved on the Run Crossing Development Plan. Conventional townhouses, which are currently a more marketable option for this property, cannot be practically constructed at a height of 52 feet. Adherence to the B.C.Z.R. in this case would require Petitioner to either artificially increase the height of the proposed townhouses or to proceed with multi-family housing units, which are not as marketable, in order to meet the minimum height requirement. In either case, a strict interpretation of the B.C.Z.R. would lead to a practical hardship for Petitioner. Mr. Thaler also noted that the impacts from this alternate development proposal would be similar to or less than those impacts from the original Run Crossing Development Plan due to the reduced number of units.

Mr. Thaler also provided testimony on the issue of compatibility. In addition to the requirements for granting a special hearing and variance, Baltimore County Code ("B.C.C.") Section 32-4-402 requires that a finding of compatibility be made when approving development in the O.T. Zone. In the prior case, the Hearing Officer found that the original Run Crossing development satisfied these compatibility requirements. Petitioner now is seeking approval of an alternate plan of development, and, therefore, a showing of compatibility must be made for this alternate plan as well. A revised Compatibility Report (Petitioner's Exhibit 4) was prepared by Mr. Thaler's office. At the hearing, Mr. Thaler briefly summarized the report and explained that

the proposed development meets each of the compatibility objectives listed in B.C.C. 32-4-402(d). As he did in the prior case, Mr. Thaler testified that this proposed development is compatible with nearby residential developments and reinforces and complements the mixed-use nature of the area as a whole. In its Zoning Advisory Committee comment dated September 9, 2009, having reviewed the report, the Office of Planning made its compatibility recommendations and stated its finding that this alternate development proposal is, in fact, compatible with the surrounding neighborhood.

With the conclusion of the testimony of Mr. Thaler, the community members in attendance were then given the opportunity to voice any concerns they might have with the proposed zoning relief. All three citizens in attendance stated that they were residents of the neighboring community and had participated in the Hearing Officer's Hearing that resulted in the original Run Crossing Development Plan being approved. James and Kathy Thomas stated that they were not opposed to the relief being requested or the alternate development proposal, but instead, had attended the hearing in order to remain involved in the process and understand what was being proposed.

Allan McLeod also attended the hearing. As he explained, at the prior development and zoning hearing for this property, he had voiced concerns regarding traffic conditions in the area and sought answers at that time regarding the completion of the extension of Dolfield Boulevard. When given the opportunity to speak during the zoning hearing, Mr. McLeod repeated those concerns and expressed frustration at the amount of time it has taken for these improvements to be completed. He did acknowledge that the existing problems with traffic are not attributable to the proposed townhouses development, but he believed any traffic generated by this development would only exacerbate the problem. Certainly, these concerns were appropriately

raised by Mr. McLeod during the prior Hearing Officer's Hearing, and I can understand his frustration. However, my authority to address this issue is limited in this case given the nature of the relief being requested in this particular case, which pertains only to zoning requirements. Also, with fewer units being proposed, this development should not result in any greater impacts to traffic conditions than the prior project, which was approved by the County after careful consideration of these concerns as evidenced by the Hearing Officer/Zoning Commissioner's Order in the prior case.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated September 9, 2009 and indicates the Office has met with Petitioner on more than one occasion to work out specific issues regarding the proposed plan. While the plan may not be in its final state at the time of the hearing, the requested special hearing and variance relief do not appear to be impacted by the requested changes that the Planning Office has communicated to Petitioner. Petitioner has agreed to address issues that the Office of Planning has raised. The Office understands that the final revisions may not be made complete until the plan comes before the Development Review Committee (DRC). Nonetheless, Petitioner plans to address the issues. In addition, the Planning Office received a compatibility report on August 19, 2009. The C.M.D.P. and Baltimore County Development Regulations require the Planning Office to make a finding of compatibility. Based on the eight objective found in B.C.C. Section 32-4-402 and an inventory of the surrounding community, the Planning Office finds that this development is compatible with the surrounding area. Comments were also received from the Department of Environmental Protection and Resource Management (DEPRM) dated September 10, 2009 which indicates that the property must comply with the Regulations for the Protection of Water

Quality, Streams, Wetlands and Floodplains, and must comply with the Forest Conservation Regulations. DEPRM also indicates that the proposed plan is not consistent with the approved preliminary Forest Conservation Plan nor is it consistent with the approved Development Plan. A revised Forest Conservation Plan must be submitted to the Environmental Impact Review (EIR) Division of DEPRM for review and approval.

After due consideration of the testimony and evidence presented, I find that Petitioner has met its burden with regard to the special hearing request to modify the standards of the C.M.D.P. These minor modifications are necessary given the unusual configuration of the lot and the presence of environmentally constrained areas on the eastern side of the property. Based on this, I am persuaded that the Petition for Special Hearing and the associated Modifications of Standards should be granted.

On the issue of the Petition for Variance, having heard the testimony and evidence, I find sufficient justification for the grant of the requested variance as to minimum height. In my judgment, Petitioner has demonstrated that the requirements of Section 307.1 of the B.C.Z.R. are satisfied. Particularly, I find that special circumstances exist based on the property's O.T. zoning -- particularly within the context of the Owings Mills Growth Area, the development of the surrounding properties, and the distance to the Owings Mills Town Center. I also find that a practical difficulty would result if Petitioner were forced to strictly comply with the requirements applicable to the minimum height requirements pertaining to residential uses. For these reasons, the Petition for Variance should also be granted.

Finally, with regard to compatibility, based on my review of the Compatibility Report and consideration of the recommendation of the Office of Planning and Mr. Thaler's testimony on

the issue, I find that the requirements of B.C.C. Section 32-4-402 have been met, and I will approve the development as being “compatible.”

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 6th day of October, 2009 that Petitioner’s Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- To approve a 20 foot side building face to side building face setback for townhouses in lieu of the 25 feet required by Section 504.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) and Division II, Section A, pp. 27-30 of the Comprehensive Manual of Development Policies (“C.M.D.P.”); and
- To approve 7 townhouses units in a row in lieu of the maximum 6 units in a row permitted by Section 504.2 of the B.C.Z.R. and Division II, Section A, pp. 27-30 of the C.M.D.P.,

be and are hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner’s Variance request from Section 307.1 of the B.C.Z.R. to allow residential uses (townhouses) in the O.T. Zone with a minimum height of 30 feet in lieu of the minimum height of 52 feet required by the B.C.Z.R., be and is hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that

proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
3. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
4. A revised Forest Conservation Plan must be submitted to the EIR Division of DEPRM for review and approval.

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