

IN RE: PETITION FOR VARIANCE * BEFORE THE
W side of The Byway Road; 190 feet N * DEPUTY ZONING
of the c/l of Morrisway Road * COMMISSIONER
4th Election District * FOR BALTIMORE COUNTY
2nd Councilmanic District
(West side of The Byway Road) * CASE NO. 2010-0343-A

M&G Investments, LLC
Petitioner

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by Michael Greenspun, Managing Member, on behalf of M&G Investments, LLC, the legal owner of the subject property. Petitioner is requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) and applicable provisions of the Comprehensive Manual of Development Policies (“C.M.D.P.”) for each lot as follows:

- To permit a minimum lot width of 52 feet in lieu of the 70 feet required;
- A minimum side yard width of 6 feet for each side in lieu of the 10 feet required; and
- A minimum sum of side yard widths of 12 feet in lieu of the 25 feet required; and
- Together with such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require, within the spirit and intent of the B.C.Z.R. and C.M.D.P. to permit the proposed uses as set forth on the Plan to Accompany this Petition.

The subject property and requested relief are more fully depicted 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 variance request was Michael S. Greenspun, Managing Member of M&G Investments LLC, and his attorney, Howard L.

Alderman, Jr., Esquire. Also appearing in support of the requested relief was Geoffrey C. Schultz with McKee & Associates, Inc., the professional land surveyor who prepared the site plan. Also appearing in support of Petitioner's request was Lynn Lanham with the Baltimore County Office of Planning. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence presented revealed that the subject property, known as Lot 6, Section D of Pleasant Hill Park, is irregularly shaped and consists of approximately 0.8134 acre, more or less, zoned D.R. 3.5. The property is located on the west side of The Byway Road, west of Owings Mills Boulevard and south of Gwynnbrook Avenue, in the Owings Mills area of Baltimore County. The property is bordered on the north and south by vacant residential lots, to the west by a residential dwelling and to the east by The Byway Road. It is comprised of two lots known as 102 and 104 The Byway Road. Both properties are improved with existing single-family dwellings¹. An overhead photograph of the subject property was marked and accepted into evidence as Petitioner's Exhibit 2.

Petitioner proposes to subdivide the subject property thereby creating three lots, 102, 104 and 106 The Byway Road. Petitioner plans to raze the existing improvements on the property, which according to testimony are antiquated and in need of significant repair and renovation, and replace them with three separate dwellings, each consisting of four bedroom, two and a half bath, colonial style, single-family dwellings with ingress/egress from The Byway Road. As shown on the site plan, the lots would be configured as follows: (1) 102 The Byway Road would consist of approximately 10,050 square feet or 0.23 acre, more or less, with a front yard width of 52 feet and side yard setbacks of six feet on each side; (2) 104 The Byway Road would consist of

¹ The primary structure known as 102 The Byway Road was built in 1948 and sold to M&G Investments, LLC, along with 104 The Byway Road, in May, 2009 by Thelma K. Woolford, according to the Real Property Data Search printouts contained in the case file.

approximately 11,160 square feet or 0.25 acre, more or less, with a front yard width of 52 feet and side yard setbacks of six feet on each side; and (3) 106 The Byway Road would consist of approximately 12,480 square feet or 0.28 acre, more or less, with a front yard width of 69 feet and side yard setbacks of six feet on each side. According to Petitioner's attorney, Mr. Alderman, a site plan was initially proposed with the third lot located behind the other two lots and with access provided by a panhandle ingress/egress. However, in the process of discussions with the Office of Planning, it was suggested that the current minor subdivision plan, as shown on Petitioner's Exhibit 1, would be the preferred development plan in order to maintain the character of the neighborhood. While this plan meets the minimum lot size requirements and front and rear yard setback requirements, it necessitates variance relief for lot width and side yard setbacks and sums. Mr. Alderman explained that this relief is necessary due to the irregular shape, size and configuration of the parcel, which renders strict compliance with the Zoning Regulations impractical.

Also appearing in support of Petitioner's variance request was Lynn Lanham, Chief of the Development Review Division of the Office of Planning. Ms. Lanham confirmed that the variance request is necessitated by Planning's desire for the proposed lots to be reconfigured to have road frontage/access, and testified that her office recommends approval of Petitioner's request because it is compatible with the characteristics and pattern of development in the surrounding area and would likely improve the aesthetics of the neighborhood.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning dated June 28, 2010 indicate that Petitioner's engineer submitted three requests for minor subdivisions on adjacent lots 5 and 6 and on adjacent lots 2, 3 and part of lot 4 in a subdivision known as Pleasant Hill

Park in 2009. In the instant case, the request for a three lot minor subdivision, #09058M, known as 102 The Byway (a re-subdivision of lot 6) was submitted showing one lot as a panhandle lot, but did not meet the criterion for panhandle use. The Planning Office recommended reconfiguration of the lots so that all would have road frontage and a site layout that is compatible with the overall neighborhood pattern. The Planning Office supports the variance requests for lot width of 53 feet in lieu of 70 feet and a minimum side yard of 6 feet in lieu of 10 feet; and a sum of side yard widths of 12 feet in lieu of 25 feet provided all minor subdivision comments are addressed. Comments were also received from the Department of Environmental Protection and Resource Management dated June 28, 2010, indicating that proposed resubdivision of the property and/or future building permits will be reviewed by the Groundwater Management Section especially to check for any existing well(s) and septic system(s) on this site.

The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). As indicated by the Court in *Cromwell*, the two-part variance test involves finding that a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result. *Id.* at 707.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, I find that the irregular shape, size and configuration of the subject property combine to render the property unique. Further, I find that strict compliance with the Zoning Regulations would result in

unreasonable hardship and practical difficulty. It is also of note that the Office of Planning supports Petitioner's development proposal and requests for zoning relief. Further, this re-development is of the infill variety, a preferred method of development, which takes advantage of already existing provision of services and infrastructure, while also updating, repairing and beautifying the conditions of the property. With these considerations in mind, I also find this variance request can be granted in strict harmony with the spirit and intent of the B.C.Z.R., as interpreted in *Cromwell*, and in such a manner as to grant relief without injury to the public health, safety and general welfare. The variances needed are completely interior to the overall property lines and will not result in any increase in allowable density.

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

THEREFORE, IT IS ORDERED this 7th day of September, 2010 by this Deputy Zoning Commissioner that Petitioner's Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") and applicable provisions of the Comprehensive Manual of Development Policies ("C.M.D.P.") for each lot as follows:

- To permit a minimum lot width of 52 feet in lieu of the 70 feet required; and
- A minimum side yard width of 6 feet for each side in lieu of the 10 feet required; and
- A minimum sum of side yard widths of 12 feet in lieu of the 25 feet required,

be and are hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its building permit 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 such time as the 30-day appellate process from 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. Petitioner shall comply with the rules and regulations pertaining to minor subdivisions in Baltimore County, and in particular the comments set forth in proposed minor subdivision #09058M.
3. The proposed re-subdivision of the property and/or future building permits will be reviewed by the Groundwater Management Section of the Department of Environmental Protection and Resource Management, especially to check for any existing well(s) and septic system(s) on this site.

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