

**IN RE: PETITION FOR VARIANCE**  
N/Side of Winands Road, 119 feet E of  
Adrienne Way  
2<sup>nd</sup> Election District  
4<sup>th</sup> Councilmanic District  
**(Lots 1 through 21 – McDonogh Green)**  
  
True Gospel Apostolic Faith Church, Inc.  
*Legal Owner*  
M & G Investments, LLC, *Contract Purchaser*  
Petitioners

\* BEFORE THE  
\* OFFICE OF ADMINISTRATIVE  
\* HEARINGS FOR  
\* BALTIMORE COUNTY  
\*  
\* **CASE NO. 2011-0190-A**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance. The Petition was filed by the True Gospel Apostolic Faith Church, Inc., legal owner of the subject property, and M&G Investments, LLC, contract purchaser. The variance relief as presented at the hearing is from B.C.Z.R. Section 1B01.2.C.1.b to permit: 1) on Lot Nos. 1 thru 11 and 17 thru 21, a rear yard setback of 20 feet in lieu of the 30 feet required; and 2) on Lots Nos. 12 thru 16, a rear yard setback of 15 feet in lieu of the 30 feet required.

The record in this case reflects that the subject property was properly posted and advertised as required by the Baltimore County Zoning Regulations (“B.C.Z.R.”). Appearing at the public hearing on this Petition were Geoffrey C. Schultz, PLS, President of McKee & Associates, Inc., the engineering/surveying/land planning firm that prepared the plat to accompany the Petition, and Michael S. Greenspun, Member of M&G Investments, LLC. The Petitioners were represented by Howard L. Alderman, Jr., Esquire. There were no Protestants or interested citizens present.

The proffered testimony indicated the subject property is a long, narrow parcel, binding on Winands Road to the south and terminating in an irregular configuration to the north. The subject

property is comprised of approximately six acres, zoned D.R. 3.5, which has been previously approved by the Hearing Officer for Baltimore County in Case No. II-570, for 21 residential lots, two stormwater management reservations, a variety of easements and a dedicated area of active open space, all of which are depicted on the Plat to Accompany the Petition for Variance, accepted into evidence as Petitioners' Exhibit 1. During the previous development approval proceedings, based on the narrowness of the parcel, the County's Department of Public Works recommended a waiver of road right of way width and road paved section for the proposed development road known as Bald Eagle Court which the Hearing Officer granted.

The testimony proffered indicated that at the time of the development plan consideration, only the owner of the property and the developer were involved as there was no builder. A pattern book, requested by the County Office of Planning pursuant to B.C.Z.R. Section 260, depicting generic homes that could be built on the proposed lots was accepted into evidence during the development plan hearing. Well after approval of the development plan, Ryan Homes reached agreement to purchase the lots if homes compatible with the other, surrounding homes in the area could be constructed.

Ryan Homes and Mr. Greenspun worked with the Office of Planning to revise the original pattern book, to reflect the four Ryan home styles that have been approved by the Planning Office for construction in the County. To ensure compatibility with the newly constructed subdivisions that surround the subject property, exterior features were modified and an optional morning/sun room was included with each model. Once those features were incorporated, the Office of Planning approved the document entitled "Ryan Homes, McDonogh Greens PDM #02-750, Revised Pattern Book, January 2011", a copy of which was accepted as Petitioners' Exhibit 2.

Proffered testimony described the subject property as an in-fill parcel, all lands around it having been developed previously. The development of the subject property, to be served by public water and sewerage facilities, is located within the Owings Mills designated Growth Area and was appropriately described as part of the County's residential Smart Growth objectives.

The proffered testimony described the necessity of the requested variance relief to meet the compatibility requirements of the Residential Performance Standards (B.C.Z.R. Section 260). The rear yard is often used for recreational activities and the morning/sunrooms that will project into the rear yard will provide for many of the same types of activities, but in an enclosed environmentally controlled area. Having reviewed the proposed relief and the Plat to Accompany the Petition, the Office of Planning submitted its Zoning Advisory Comments of "no objection to the requested relief", a copy of which was accepted as Petitioners' Exhibit 3.

The testimony offered, corroborated by the witnesses who were present and available to testify, was that the property is an in-fill, unique parcel, the width constraints of which have been recognized previously by Baltimore County. I am persuaded, based on the evidence and testimony presented, that the variance relief from the requirements from the B.C.Z.R. should be granted. To deny the requested relief would prohibit new dwellings that are compatible with the residential scheme of existing homes in the area. The Office of Planning reviewed the request and approved revisions to the McDonogh Green pattern book after a compatibility determination required by the Residential Performance Standards. Ryan Homes, the builder, would face real, practical difficulty attempting to secure or sell new homes that were not compatible with the community.

The evidence and proffered testimony were substantial and uncontradicted that the existing conditions render the subject property unique to other similarly zoned property in the community.

The relief requested is the minimum relief necessary to permit compatible homes to be constructed. Other, larger developments have proceeded in the community, leaving this narrow parcel as an in-fill property. No additional residential density results from the requested relief and the relief brings the subject property into compliance with development already existing in the community. The spirit and intent of the setback requirements and the Residential Performance Standards of the B.C.Z.R. will be observed by granting of the requested relief.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 11<sup>th</sup> day of February, 2011, that the Petition for Variance relief from B.C.Z.R. Section 1B01.2.C.1.b to permit: 1) a rear yard setback of 20 feet in lieu of the 30 feet required on Lot Nos. 1 thru 11 and 17 thru 21; and 2) a rear yard setback of 15 feet in lieu of the 30 feet required on Lots Nos. 12 thru 16 shall be and hereby are GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the thirty (30) day Appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. When applying for a building permit, the site plan filed must reference this Case and set forth and address the conditions and restrictions of this Order.

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

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SIGNED  
LAWRENCE M. STAHL  
Administrative Law Judge  
for Baltimore County

LMS:pz