

IN RE: **PETITION FOR VARIANCE**
NE corner of White Marsh Blvd.
and Campbell Blvd.
15th Election District
6th Council District
(10500-10506, 10514-10518, 10526
Windlass Run Road)

Windlass Overlook Two, LLC
Petitioner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2012-0118-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by Windlass Overlook Two, LLC, the legal property owner. The Petition for Variance seeks variance relief from Section 1B01.2.C.1.b of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a rear yard setback of nineteen (19) feet in lieu of the required thirty (30) feet and relief from Section 301.1 of the BCZR to permit a rear yard setback of nineteen (19) feet in lieu of the required twenty-two (22) feet, for lots 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Windlass Overlook subdivision.

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

Appearing at the public hearing in support of the requested relief was Mr. Robb Aumiller, on behalf of the property owner, Windlass Overlook Two. Adam D. Baker appeared as Counsel for the Petitioner. David Martin, of Martin and Phillips Design Associates, Inc., an expert retained by Petitioner, also attended the hearing. There were no Protestants or other persons present, and the file does not contain any letters of protest or opposition from neighboring owners. The Petitioner did, however, submit letters in support of the Petition for Zoning Variance from Brian Powell, who owns property adjacent to the Windlass Overlook subdivision and from Elizabeth Salvage, of Ryan

Homes, which has been contracted to construct the single family homes on the property. The letters were introduced into evidence as Petitioner's Exhibits 3 and 4, respectively. As no one appeared at the hearing in opposition to the request, counsel for the Petitioner proceeded by way of a modified proffer.

Testimony and evidence revealed that the subject property (herein referred to as the "Property") is a 19.997 acre parcel located on the north side of MD 43 (Philadelphia Road) and is currently zoned DR 3.5. In 2006, a Development Plan proposing a thirty (30) lot subdivision with single-family detached dwellings was approved by Baltimore County (PAI No. 15-854). In 2007, the Property was rezoned from DR 2 to DR 3.5 as a result of the Middle River Community Plan. In 2008, the Baltimore County Design Review Committee ("DRC") approved modifications to building setbacks and notes of the approved Development Plan to reflect the new DR 3.5 zoning (DRC No. 082508J).

The Property is currently improved with the road network, as shown on the 2006 Development Plan, and a single family dwelling on Lot 1. Lot 1 is owned by Jomy and Mary Antony, but is currently leased to Ryan Homes for use as the model home for the Windlass Overlook subdivision. Windlass Overlook Two, LLC owns the remaining lots on the Property (lots 2-30).

As detailed on Petitioner's Exhibit 1, the Property comprises approximately 19.997 gross acres in Middle River. For lots 7-15, the Petitioner desires to include an architectural feature known as a "morning room" which will protrude from the rear of the dwelling. In addition, for these lots, the Petitioner would like the option of attaching a deck to the dwelling that would protrude no farther into the setback than the proposed morning room. At the time at which the Development Plan was approved, Ryan Homes had not been contracted to construct the dwellings on the

Property, nor had the exact design of the dwellings been finalized. The design of the dwellings that were part of the 2006 approval was a rough estimate. The pattern book for the Windlass Overlook development has been updated and approved to reflect the current vision for the design of the dwellings. It is for these reasons that the Petitioner filed the Petition for Variance from Sections 1B01.2.C.1.b and 301.1 of the B.C.Z.R.

In addition to the site plan, marked into evidence as Petitioner's Exhibit 1, the Petitioner introduced a comprehensive plan for the Windlass Overlook subdivision. To the west of the Property is another parcel which is owned by the Petitioner and on which approval has been granted for a development plan for a thirty-one (31) lot subdivision of single family detached dwellings. The adjacent parcel is currently undeveloped and, while the development plan has been approved, a plat has not yet been recorded.

The vision for the two parcels was to develop them into a single residential subdivision. In considering the proposed development, the Baltimore County Office of Planning recommended that the developer consider a neo-traditional design that would incorporate a variety of housing types. In light of market forces, however, the parcels have progressed through the development approvals process at different paces. Planning's neo-traditional design aspirations have been slightly modified to reflect a more homogenous variety of housing with a sixty-one (61) lot subdivision improved with single family detached dwellings.

It was explained during the hearing that the uniqueness of the property justifies the requested variances. As made clear by the evidence and testimony presented, Petitioner explained that the Office of Planning, in its review of the proposed Windlass Overlook development, ardently advocated for a neo-traditional planning scheme. In light of the unique shape of the Property, in conjunction with the environmentally protected areas on the eastern portion of the Property, the

neo-traditional development scheme resulted in a subdivision with smaller and, in some instances, oddly shaped lots. With less space on which to construct the dwellings, it presented challenges for adhering to the setback requirements. It is this site's development history together with the current configuration of the lots and environmentally protected areas that render the property unique in the context of this case. The Petitioner further indicated, that a strict interpretation of the applicable setback requirements would create a practical difficulty requiring Petitioner to make changes to the design of the proposed dwellings that would result in a less attractive, less marketable home.

With regard to any adverse impact, the lots for which the variance relief is sought back up to (1) property owned by the Petitioner, (2) property owned by the Powells, who have submitted a letter in support of the variances, and (3) the environmentally protected areas of the Property. As a result, granting the variance relief would not adversely impact any of the surrounding community..

It is important to note that no reviewing County agency issued Zoning Advisory Committee (ZAC) comments asking for a denial of any of the requested relief.

After due consideration of the testimony and evidence presented, it is clear that Petitioner has met the standards set forth in B.C.Z.R. Section 307, and that the variance relief should be granted. The subject property is unique due to its development history and existing site conditions and requiring Petitioner to adhere strictly to the requirements of the B.C.Z.R. would cause a practical difficulty. Finally, I find that no adverse impact will result if the requested relief is granted.

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 variance request should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County this 23rd day of December, 2011 that the Petition for Variance relief from Section 1B01.2.C.1.b of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a rear yard setback of nineteen (19) feet in lieu of the required thirty (30) feet and relief from Section 301.1 of the BCZR to permit a rear yard setback of nineteen (19) feet in lieu of the required twenty-two (22) feet, for lots 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Windlass Overlook subdivision be and is hereby GRANTED.

The relief granted herein is subject to the following condition:

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.

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz