

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E side of Burmont Avenue, 67.52' N	*	OFFICE OF ADMINISTRATIVE
of the c/line of Lykens Court	*	HEARINGS FOR
2 nd Election District	*	BALTIMORE COUNTY
2 nd Council District	*	CASE NO. 2012-0154-A
(3621 Burmont Avenue)		
Parcel 1206 3621 Burmont, LLC		
<i>Petitioner</i>		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by Parcel 1206 3621 Burmont, LLC, by and through its attorney, Francis Borgerding, Esquire. The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows:

1. Section 1B01.1.B.c(2) and Article 32-4-402 of the Baltimore County Code (B.C.C.), to permit a modification to the Residential Transition Area (R.T.A.) limits and buffer reduction;
2. Section 1B01.1.B.e(3), to permit a graded and landscaped R.T.A. buffer of varied width in lieu of the required 50 feet ungraded and uncleared buffer. And to permit drainage areas and stormwater management facilities within the required buffer;
3. Section 1B01.1.B.e(5), to permit a public road and parking lot within the 75 feet R.T.A. setback and a reduced buffer of 32 feet in lieu of the 50 feet required; and
4. Section 504.2 authorizing the Comprehensive Manual of Development Policies (CMDP) and Section A – Division of the CMDP, and Section 409 of the B.C.Z.R., to permit 16 continuous parking spaces without a landscape island separator in lieu of the required 10 continuous spaces and to permit a public road in the R.T.A.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 2.

Appearing at the public hearing in support of the variance request were Rick Chadsey and David Lloyd Martin, Landscape Architect with Martin & Phillips Design Association, Inc., the

consultant who prepared the site plan. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of opposition or protest.

Testimony and evidence revealed that the subject property is 1.735 acres and is zoned DR-5.5. A development plan (Exhibit 1) for the property was approved by Order of Deputy Zoning Commissioner Murphy, by Order dated May 19, 2006 (PDM File No. 02-688). That plan envisioned the construction of eight duplexes and one single family dwelling on the subject premises. At present, and in light of certain market forces, the Petitioner proposes to construct adjoining townhomes, which of course triggers Residential Transition Area (RTA) requirements. It is from these requirements that the Petitioner seeks variance relief.

As explained by Petitioner's engineer, the houses now proposed are in fact located farther away from the adjoining single family dwellings than was the case with the duplexes. Mr. Martin also opined that the proposed plan would satisfy each of the elements set forth at Baltimore County Code (B.C.C.) § 32-4-402. In addition, and as with the previous plan, the developer will construct a 6' high board on board fence (the details are shown on Exhibit 2) that will effectively screen the single family dwellings located to the north of the subject property. As such, I find that the goals of the RTA regulations, as articulated at pp. 23-33 of the CMDP, will be satisfied. This is especially the case here, where only nine (9) townhomes are proposed.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies.

Based upon the testimony and evidence presented, I will grant the request for variance relief which, under the B.C.Z.R. and B.C.C. is more appropriately referenced as a “modification” of RTA standards. Even so, and employing the exacting standards for 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. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People’s Counsel, 407 Md 53, 80 (2008).

The Petitioner has met this test. Petitioner has an approved Final Development Plan (FDP) for the site, and needs relief only because the change in housing type generated RTA requirements, which certainly renders this tract unique.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is amply demonstrated by the lack of any neighborhood opposition or negative comments from County agencies.

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

THEREFORE, IT IS ORDERED, this **15th** day of February, 2012 by this Administrative Law Judge that Petitioner’s Variance request from the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows:

1. Section 1B01.1.B.c(2) and Article 32-4-402 of the Baltimore County Code (B.C.C.), to permit a modification to the Residential Transition Area (R.T.A.) limits and buffer reduction;
2. Section 1B01.1.B.e(3), to permit a graded and landscaped R.T.A. buffer of varied width in lieu of the required 50 feet ungraded and uncleared buffer. And to permit drainage areas and stormwater management facilities within the required buffer;
3. Section 1B01.1.B.e(5), to permit a public road and parking lot within the 75 feet R.T.A. setback and a reduced buffer of 32 feet in lieu of the 50 feet required; and
4. Section 504.2 authorizing the Comprehensive Manual of Development Policies (CMDP) and Section A – Division of the CMDP, and Section 409 of the B.C.Z.R., to permit 16 continuous parking spaces without a landscape island separator in lieu of the required 10 continuous spaces and to permit a public road in the R.T.A.

be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his 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 will be required to return and be responsible for returning said property to its original condition.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw