

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side of Eastern Avenue, 369'		
W of c/line of Selig Road	*	OFFICE OF
15 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
(1031 Old Eastern Avenue)		
	*	FOR BALTIMORE COUNTY
Glen Manor, LLC		
Petitioner	*	CASE NO. 2012-0283-A

* * * * *

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 Christopher D. Mudd, Esquire, on behalf of the legal owner, Glen Manor, LLC. The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- Section 1B01.1.B.1, to permit 0' Residential Transition Buffer (RTA) buffer in lieu of the required 50' buffer and to permit an RTA building setback a minimum of 4' in lieu of the required 75' setback;
- Section 1B01.2.C.1, to permit a minimum rear yard setback of 4' in lieu of the required 30' and a minimum side yard setback of 8' in lieu of the required 20' for a storage shed;
- Section 1B01.2.C.1.a, to permit a minimum front yard setback to an interior lot line of 3' in lieu of the required 40', and a minimum side yard setback to an interior lot line of 8' in lieu of the required 20' for a clubhouse building, and
- Sections 1B01.2.C.1.a and 102.2, to permit a setback between buildings a minimum of 30' in lieu of the required 70'.

The subject property and requested relief is more fully depicted on the two sheet site plan that was marked and accepted into evidence as Petitioner's Exhibit 1A and 1B.

Appearing at the public hearing in support of the variance request was Nelson Leenhouts, Chairman and CEO, and Bill Struzzi, Project Manager with Home Leasing, the company managing the complex, and Steve Warfield with Matis Warfield, who prepared the site plan. Christopher Mudd, Esquire appeared as attorney for the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. A ZAC comment was received from the Department of Planning on May 31, 2012, indicating the following:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The Department of Planning supports the petitioner's variance request. Currently the subject property is overgrown with brush and is bordered by a deteriorating fence. The proposed improvements include a clubhouse, tot lot and garden plots as well as replacement of the existing fencing and upgrades to the landscaping. A landscape plan is in the process of being prepared. These improvements are being made as part of property wide improvements, which will upgrade all 252 apartments to include new kitchens and bathrooms, refinished/replaced flooring, new entry doors and other improvements.

Residents adjacent to the subject property are in favor of the project and there appears to be no negative impacts to the surrounding community.

Testimony and evidence revealed that the subject property is 15.0577 acres and is zoned DR 16, DR 5.5, BL and BM. The property is improved by an existing apartment complex, and the Petitioner purchased the property in January, 2012. The Petitioner is a family owned business, and it owns and operates several apartment complexes in the area. It is planning to undertake major renovations to the complex (estimated at over \$12 million dollars) including the construction of a community center with modern amenities for the tenants of the complex. To do so requires variance relief from several setback requirements imposed by the B.C.Z.R.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. 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).

Petitioner has met this test.

The subject property is irregularly shaped, and as seen on Exhibit 1B, a portion of the property (where the community center is proposed) juts from the southern boundary like an appendage. The complex was constructed in the 1940s, and long predates the B.C.Z.R., which also renders the property “unique” in a zoning sense.

If relief were denied, the Petitioner would be unable to construct the improvements, which would more than qualify as a practical difficulty. As noted, the apartments are antiquated and lack the amenities found in modern units. In addition, the Petitioner will be unable to secure appropriate financing unless these improvements are undertaken.

Finally, the neighborhood strongly supports the project, and the Department of Planning has opined that the community would not be negatively impacted. I concur, and to the contrary, believe the project will provide a much-needed face lift for the complex, and with respect to the community building, the Petitioner has planned an attractive structure for that location (Exhibit 7) that will be constructed in an area that now essentially functions as an open dump. See Exhibit 4A-4I (color photos).

Near the close of the hearing, Counsel for the Petitioner questioned whether B.C.Z.R. § 1B01.1.A.1.c was applicable in this setting. Having reviewed that regulation, I do not believe that it is, given that it concerns construction of “group houses” and “multifamily buildings” in DR 5.5

zones. In this case, the multifamily apartment buildings have existed for over 70 years. The proposed community building is not a dwelling at all, but is an accessory structure to the apartment complex. Of course, even if that regulation were applicable, I believe the proposed community center building looks residential (both in appearance and scale; see Exhibit 7) and would therefore satisfy the compatibility requirement found in that regulation.

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 22 day of June, 2012, by this Administrative Law Judge, that Petitioner's Variance request from the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- Section 1B01.1.B.1, to permit 0' Residential Transition Buffer (RTA) buffer in lieu of the required 50' buffer and to permit an RTA building setback a minimum of 4' in lieu of the required 75' setback;
- Section 1B01.2.C.1, to permit a minimum rear yard setback of 4' in lieu of the required 30' and a minimum side yard setback of 8' in lieu of the required 20' for a storage shed;
- Section 1B01.2.C.1.a, to permit a minimum front yard setback to an interior lot line of 3' in lieu of the required 40', and a minimum side yard setback to an interior lot line of 8' in lieu of the required 20' for a clubhouse building, and
- Sections 1B01.2.C.1.a and 102.2, to permit a setback between buildings a minimum of 30' in lieu of the required 70',

be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for the appropriate permits and may be granted same upon receipt of this Order, however the Petitioner is hereby made aware that proceeding at this time is at their 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:pz