

<b>IN RE: DEVELOPMENT PLAN HEARING &amp; PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE OF
1 <sup>st</sup> Election District	*	ADMINISTRATIVE HEARINGS
1 <sup>st</sup> Council District	*	FOR
<b>KOZIOL PROPERTY</b>	*	BALTIMORE COUNTY
(11 South Belle Grove Road)	*	
Carl Alan & Laurel N. Koziol	*	<b>HOH Case No. 01-0574 and</b>
<i>Owner/Developer</i>	*	<b>Zoning Case No. 2014-0153-A</b>

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**ADMINISTRATIVE LAW JUDGE’S COMBINED ZONING AND DEVELOPMENT PLAN OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for a public hearing on a development proposal submitted in accordance with the development review and approval process contained in Article 32, Title 4, of the Baltimore County Code (“B.C.C.”). The hearing also involves a request for variance relief under the Baltimore County Zoning Regulations (B.C.Z.R.) and the Comprehensive Manual of Development Policies (C.M.D.P). Carl Alan and Laurel N. Koziol, the developers of the subject property (hereinafter “the Developer”), submitted for approval a two-sheet redlined Development Plan prepared by Colbert, Matz & Rosenfelt, Inc., known as “Koziol Property.” Developer’s Exhibit 1A and 1B.

The Developer proposes five (5) single-family dwellings (4 proposed and 1 existing) situated on 2.8 gross acres of DR 3.5 zoned land. The site is currently improved with one (1) single-family dwelling, which is historic. The tract is a mix of lawn and woods.

The existing single family dwelling is designated a Final Landmarks structure #387, “Boxwood” (Belle Grove Gardener’s House). A Historical Environmental Setting (HES) of

approximately 0.4 acres was delineated around the structure. Both the Landmarks Preservation Commission (LPC) and the Planning Board voted to support the project, as noted in the June 25, 2014 memorandum and attachments admitted as Developer's Exhibit 2.

In addition to the Hearing Officer's Hearing (HOH), the Developer is requesting Variance relief pursuant to § 1B01.2.C.1.b of the B.C.Z.R. and Table VI of the C.M.D.P., to permit a 10' side building face to tract boundary setback, a 12' side building face to side building face setback, and a 26' rear building face to rear property line setback, in lieu of the respectively required 15', 20', and 30' setbacks. The variance relief pertains to only one lot (Lot No. 5) in the proposed subdivision.

The hearing was held on Thursday, November 6, 2014, at 10:00 AM, Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland. The property was posted with the Notice of Hearing Officer's Hearing and Zoning Notice (both on October 5, 2014) for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing.

Appearing at the requisite Hearing Officer's Hearing in support of the Development Plan on behalf of the Developer and property owner was Carl and Laurel Koziol and Richard E. Matz, P.E., with Colbert, Matz & Rosenfelt, Inc., the consulting firm that prepared the site plan. Howard L. Alderman, Esquire with Levin & Gann, PA, appeared and represented the Developer. Jimmy Laughlin, President of the Paradise Community Association, attended the hearing and indicated his association supported the project.

Numerous representatives of the various Baltimore County agencies, who reviewed the Development Plan, also attended the hearing, including the following individuals from the Department of Permits and Development Management: Darryl Putty (Project Manager), Vishnu

Desai and Jean M. Tansey, Development Plans Review, Brad Knatz, Real Estate Compliance, and Gary Hucik (Office of Zoning Review). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (DEPS), and Lloyd Moxley from the Department of Planning.

The role of the reviewing County agencies in the development review and approval process is to perform an independent and thorough review of the Development Plan as it pertains to their specific areas of concern and expertise. The agencies specifically comment on whether the plan complies with all applicable Federal, State, and/or County laws, policies, rules and regulations pertaining to development and related issues. In addition, these agencies carry out this role throughout the entire development plan review and approval process, which includes providing input to the Hearing Officer either in writing or in person at the hearing. It should also be noted that continued review of the plan is undertaken after the Hearing Officer's Hearing during the Phase II review of the project. This continues until a plat is recorded in the Land Records of Baltimore County and permits are issued for construction.

Pursuant to §§32-4-227 and 32-4-228 of the B.C.C., which regulate the conduct of the Hearing Officer's Hearing, I am required first to identify any unresolved comments or issues as of the date of the hearing. At the hearing, each of the Baltimore County agency representatives identified above indicated that the redlined Development Plan (marked as Developer's Exhibit 1A and 1B) addressed any and all comments submitted by their agency, and they each recommended approval of the plan.

#### DEVELOPER'S CASE

The Developer presented one witness, Maxwell Vidaver, an urban planner whose firm prepared the Development Plan. Mr. Vidaver, who was accepted as an expert, explained the

project by referring to the two-sheet Development Plan, and he noted that under the DR 3.5 zoning classification, the site would allow ten (10) single family dwellings though only five (5) [total] were being proposed. In conclusion, the witness opined that the development proposal satisfied all Baltimore County rules and regulations.

The Baltimore County Code clearly provides that the “Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations.” B.C.C. §32-4-229. After due consideration of the testimony and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from County agencies that the development plan satisfies those agencies’ requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the redlined Development Plan.

#### ZONING REQUEST

#### VARIANCE

In addition to the Development Plan approval, the Developer sought variance relief under the B.C.Z.R. and C.M.D.P. As noted above, the setback variances involve only Lot No. 5, and as Mr. Vidaver explained, the project became “tight” as a result of the relocation of the single family dwellings to comply with the LPC’s comments and to preserve the integrity of the historic structure and setting. Based upon the testimony and evidence presented, I will grant the request for variance relief.

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 Petitioners have met this test. Mr. Vidaver testified that almost  $\frac{1}{3}$  of the site would be dedicated to Baltimore County as a forest conservation easement. In addition, the 0.4 acre historical setting also further constricts the “building envelope.” Mr. Vidaver noted that no other properties in the area have such features, and I concur with his opinion that the site is therefore unique. Petitioners would experience a practical difficulty if the B.C.Z.R. were strictly interpreted, since they would not be able to complete the project as shown on the Plan, which was designed primarily to accommodate the historic structure and setting. The relief will in no way be injurious to the public health, safety and welfare. Neither the community nor Baltimore County expressed concern with the project, and as Mr. Vidaver testified, the variances are truly “internal,” in the sense that they will not impact any adjacent property owners.

Pursuant to the development regulations contained in Article 32, Title 4, of the Baltimore County Code, the Koziol Property Development Plan shall be approved. In addition, the Petition for Variance will also be granted.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 7<sup>th</sup> day of November, 2014, that the two-sheet redlined “**KOZIOL PROPERTY**” Development Plan, marked and accepted into evidence as Developer’s Exhibit 1A and 1B, be and is hereby **APPROVED**.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to § 1B01.2.C.1.b of the Baltimore County Zoning Regulations (B.C.Z.R.) and Table VI of the Comprehensive Manual of Development Policies (C.M.D.P), to permit a 10' side building face to tract boundary setback, a 12' side building face to side building face setback, and a 26' rear

building face to rear property line setback (for Lot No. 5 only), in lieu of the respectively required 15', 20', and 30' setbacks, be and is hereby GRANTED.

Any appeal of this Order shall be taken in accordance with Baltimore County Code, § 32-4-281.

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw