

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(5705 Kenwood Avenue)		
14 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Council District		
S.F.B., LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2017-0255-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by S.F.B., LLC, owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from §1B01.1.B.1.e(5) of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit the height of Unit 1 to be 42.2 ft.; Unit 2- 40.7 ft.; Unit 3- 40.7 ft.; Unit 4- 41.4 ft.; Unit 5- 41.5 ft.; and Unit 6- 42.1 ft., as depicted on the attached plan, in lieu of the required 35 ft. maximum within the one hundred foot Residential Transition Area (RTA), and to amend the Final Development Plan for Lot Nos. 1-6. A site plan was marked as Petitioner’s Exhibit 1.

Thomas Farr and landscape architect Brian Collins appeared in support of the petition. Joseph R. Woolman, III, Esq., represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the State Highway Administration (SHA). Neither agency opposed the requests.

The site is approximately 5.21 acres in size and zoned DR 5.5. The property was previously the subject of a development hearing wherein 26 townhouse units were approved for the site. At

present, none of the dwellings have been constructed. Petitioner seeks variance relief for six of the proposed units which exceed the height permitted in the RTA area. It is worth noting the D.R. 5.5 zone imposes a 50 ft. height limitation, and thus the proposed improvements would otherwise satisfy the B.C.Z.R. if Units 1-6 were not in the transition area.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioner has met this test. The tract is split-zoned and has an irregular shape. In addition, there are grade changes across the site resulting in the need for zoning relief. As such the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct the proposed dwellings. Finally, I find that the variances 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 demonstrated by the lack of community and/or Baltimore County opposition.

THEREFORE, IT IS ORDERED, this 16<sup>th</sup> day of **May, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to §1B01.1.B.1.e(5) of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit the height of Unit 1 to be 42.2 ft.; Unit 2- 40.7 ft.; Unit 3- 40.7 ft.; Unit 4- 41.4 ft.; Unit 5- 41.5 ft.; and Unit 6- 42.1. ft., in lieu of the required 35 ft. maximum within the Residential Transition Area (RTA), and to amend the Final Development Plan known as Patrick S. Craig Property a.k.a. 5705 Kenwood Avenue (PAI File # 14-480) for Lot Nos. 1-6 **only**, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioner must obtain an entrance permit from the SHA.
3. The 50 ft. Residential Transition Area buffer shown on the site plan must remain ungraded and undisturbed.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln