

IN THE MATTER OF
BIRD RIVER GROVE, LLC
11319 Bird River Grove Road
15th Election District; 6th Councilmanic District

RE: Petitions for Special Hearing and Variance
to confirm 4 lots of record, and setbacks
for building 3 single family dwellings

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 17-122-SPHA

* * * * *

OPINION

This matter comes to the Board of Appeals on appeal by Richard Pitz (the “Protestant”) of the portion of the Opinion and Order issued by John E. Beverungen, Administrative Law Judge for Baltimore County (the “ALJ”), dated December 30, 2016 granting Petitions for Variance with respect to Lots 1 and 2 that are owned by Bird River Grove, LLC (the “Petitioner”), located at 11319 Bird River Grove Road, White Marsh, Maryland 21162 (the “Property”).

In the proceedings before the Board, the Petitioner was represented by Lawrence E. Schmidt, Esquire and the Protestant appeared *pro se*. In addition, Peter Max Zimmerman, Esquire, People’s Counsel for Baltimore County, appeared at, and participated in, the hearing.

A hearing was held before the Board on April 13, 2017, and the Board conducted a public deliberation on May 9, 2017.

STATEMENT OF FACTS

The Property, which is approximately ¾ of an acre in size in total, is zoned R.C.2 (Agricultural) and consists of four separate lots (Lot 1, Lot 2, Lot 3, and Lot 4). The lots are part of the Bird River Grove subdivision, which dates to 1925.

By way of background, the Petitioner originally filed Petitions for Special Hearing to confirm that Lot 1 and Lot 2 are “lots of record” that can be developed with detached single family dwellings on each lot and to permit the consolidation of Lot 3 and Lot 4 as lots of record so that the consolidated lot also could be improved with a third single family dwelling. In addition, the Petitioner filed Petitions for Variance from the setbacks for the proposed single family dwellings and proposed decks on Lot 1, Lot 2, and combined Lots 3 and 4. The ALJ granted the Petition for Special Hearing in part, ruling that Lot 1 and Lot 2 are lots of record and can be developed with detached single family dwellings as non-conforming lots of record, and granted the Petition for Variance in connection with the proposed setbacks for the planned single family dwellings and decks on Lot 1 and Lot 2. The ALJ denied the Petition for Special Hearing seeking to permit the consolidation of Lot 3 and Lot 4 as two existing lots of record to become a single lot to be improved with a single family dwelling and denied the Petition for Variance in connection with Lot 3 and Lot 4. As set forth above, the Protestant only appealed the Variances granted in connection with Lot 1 and Lot 2, and the Petitioner did not file an appeal.

The Petitioner filed a Motion to Dismiss the Protestant’s appeal, arguing that the Protestant could not file an appeal on behalf of the “Essex Middle River Civic Council” or the adjacent neighbors. The Motion also requested that this Board hear all issues presented before the ALJ, and not limit the proceedings on appeal to the Variances granted in connection with Lot 1 and Lot 2, in the event that the Board denied the Motion to Dismiss.

This Board denied the Motion to Dismiss, ruling that the Protestant had standing to appeal the ALJ’s decision in his individual capacity, but not in a representative capacity. In addition, based on the holdings in *Daihl v. County Board of Appeals*, 258 Md. 157 (1970), *County Fed. Sav. and Loan Ass’n v. Equitable Sav. and Loan Ass’n*, 261 Md. 246 (1971), and *Halle Cos. v. Crofton*

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Civic Ass'n, 339 Md. 131 (1994), among other cases, the Board determined that the scope of a *de novo* hearing is restricted to the specific issue or issues which have been appealed and not on every matter litigated below before the ALJ. Based on the foregoing cases, only the Petitions for Variance for Lot 1 and Lot 2 are, therefore, at issue on appeal before the Board.

Lot 1 is 0.368 acres in size and is located at the end of a peninsula along Bird River Creek in eastern Baltimore County, with water on three sides. There currently is a dilapidated and uninhabitable single family dwelling and a deteriorated boat ramp on Lot 1. Petitioner proposes to raze the existing house and construct a new, two-story single family dwelling on approximately the same location as the existing structure. Lot 2 is 0.145 acres in size and is irregularly shaped with water along one side. There are no existing structures on Lot 2, although there is evidence that there may have been a house or other building at one time on this parcel based on the Plat of Bird River Grove dated March 26, 1925 (the "Plat"). (Pet. Ex. 2). Petitioner also proposes building a two-story single family dwelling on Lot 2.

Both Lot 1 and Lot 2 are lots of record since they were created in 1925 pursuant to the recordation of the Plat, long before the adoption of the Baltimore County Zoning Regulations ("BCZR") and the creation of the R.C.2 zone in 1979. *See* BCZR 101.1 (defining "lot of record" as "[a] parcel of land with boundaries as recorded in the land records of Baltimore County on the same date as the effective date of the zoning regulation which governs the use, subdivision or other condition thereof"). As noted by Judge Beverungen, Lot 1 and Lot 2, as lots of record, "can be improved with dwellings, provided that all other zoning, development, and environmental regulations are satisfied."

Under Section 1A01.3.B.3 of the BCZR, "[n]o principal structure or dwelling (whether or not it is a principal structure) in an R.C.2 Zone may be situated within 75 feet of the center line of

any street or within 35 feet of any lot line other than a street line.” Section 301.1 of the BCZR further provides that, “[i]f attached to the main building, . . . a one-story open porch, with or without a roof, may extend into any required yard not more than 25% of the minimum required depth of a front or rear yard or of the minimum required width of a side yard.” The Petitioner seeks variances in connection with Lot 1, in relevant part, as follows:

- (a) To allow a principal building (dwelling) with a setback of 16 ft. +/- and 34 ft. +/- to a property line in lieu of the required 35 ft.;
- (b) To allow a principal building (dwelling) with a setback to the street centerline of 30 ft. +/- in lieu of the required 75 ft.; and
- (c) To allow an open projection (deck) to extend into the yard area by a distance of 18.5 ft. in lieu of the maximum permitted 8.75 ft. (with a setback of 17 ft. +/- in lieu of 26.25 ft.).

With regard to Lot 2, the Petitioner seeks variance relief, in relevant part, as follows:

- (a) To allow a principal building (dwelling) with a setback of 14 ft. +/-, 17 ft. +/- and 22 ft. +/- to a property line in lieu of the required 35 ft.;
- (b) To allow a principal building (dwelling) with a setback to the street centerline of 34.5 ft. in lieu of the required 75 ft.; and
- (c) To allow an open projection (deck) to extend into the yard area by a distance of 10 ft. in lieu of the maximum permitted 8.75 ft. (with a setback as little as 14 ft. in lieu of the required 26.25 ft.)

DECISION

Pursuant to BCZR § 307.1, the Board has the power to grant a variance from the BCZR’s area regulations “only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.” In addition, “any such variance shall be granted only if in strict harmony with the spirit

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and intent of said . . . area . . . regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare.” BCZR § 307.1.

The Court of Special Appeals has set forth the analytical framework for considering a request for a variance:

[I]t is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property’s uniqueness, exists.

Cromwell, 102 Md. App. 691, 694-95 (1995).

The Board concludes that the Petitioner has satisfied the requirements established in *Cromwell* to obtain the variances sought for Lot 1 and Lot 2. Specifically, Lot 1 is uniquely shaped and is located at the end of a peninsula extending into Bird Creek, surrounded on water by three sides. Lot 2 also is irregularly shaped and has water on one side. Due to their shape, size, location, and shoreline, these lots are unique. In addition, the Petitioner would experience practical difficulty and/or unreasonable hardship if the BCZR’s setback regulations were applied strictly to Lot 1 and Lot 2 in that the Petitioner would be unable to build dwellings with reasonably sized decks on the lots.

Moreover, the Board finds no evidence that a grant of the variance relief sought by the Petitioner would be in any way injurious to public health, safety, and general welfare. In fact, the evidence presented at the hearing demonstrates that the lots in question are littered with debris and

trash along the shoreline and that the house on Lot 1 is uninhabitable, with a large, visible hole in its roof. (*See, e.g.*, Pet. Exs. 5P and 7A – 7J). Based on the Petitioner's plans for Lot 1 and Lot 2, the public health, safety, and general welfare of the community should be substantially enhanced by the cleanup and improvement of Lot 1 and Lot 2. Moreover, no County agency has opposed the Petitioner's requested variances and Michael Rhea, the only neighbor to testify at the hearing, articulated no objection to the Petitioner's plans for Lots 1 and 2.

For all of the foregoing reasons, the Board grants variances requested by the Petitioner in connection with Lot 1 and Lot 2.

ORDER

THEREFORE, it is this 16th day of July, 2017, by the Board of Appeals of Baltimore County,

ORDERED, that the Petition for Variance with regard to Lot 1: (a) To allow a principal building (dwelling) with a setback of 16 ft. +/- and 34 ft. +/- to a property line in lieu of the required 35 ft.; (b) To allow a principal building (dwelling) with a setback to the street centerline of 30 ft. +/- in lieu of the required 75 ft.; and (c) To allow an open projection (deck) to extend into the yard area by a distance of 18.5 ft. in lieu of the maximum permitted 8.75 ft. (with a setback of 17 ft. +/- in lieu of 26.25 ft.), be and hereby is **GRANTED**.


IT IS FURTHER ORDERED, that the Petition for Variance with regard to Lot 2: (a) To allow a principal building (dwelling) with a setback of 14 ft. +/-, 17 ft. +/- and 22 ft. +/- to a property line in lieu of the required 35 ft.; (b) To allow a principal building (dwelling) with a setback to the street centerline of 34.5 ft. in lieu of the required 75 ft.; and (c) To allow an open projection (deck) to extend into the yard area by a distance of 10 ft. in lieu of the maximum

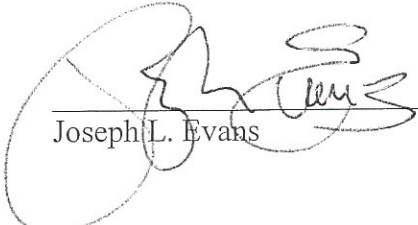
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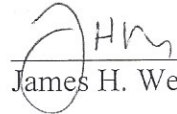
permitted 8.75 ft. (with a setback as little as 14 ft. in lieu of the required 26.25 ft.), be and hereby is **GRANTED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Joseph L. Evans


James H. West