

IN THE MATTER OF	:	BEFORE THE
	:	
TRINITY HOMES MARYLAND, LLC	:	HOWARD COUNTY
	:	
Appellant	:	BOARD OF APPEALS
	:	
v.	:	BA Case No. 809-D
	:	
THE HOWARD COUNTY	:	
DEPARTMENT OF PLANNING AND	:	
ZONING IN WP-24-073	:	
	:	
Appellee	:	
	:	

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DECISION AND ORDER

The Howard County Board of Appeals (the “Board”) convened on December 5, 2024 to hear and deliberate the Administrative Appeal Petition of Trinity Homes Maryland, LLC (“Appellant”). The Appellant is appealing the decision of the Director of the Department of Planning and Zoning, the Director of the Department of Recreation and Parks, and the Administrator of the Office of Community Sustainability to deny the Appellant’s request for Alternative Compliance (WP 24-073) for the property known as 9060 Upton Road, Ellicott City, Maryland, with respect to Section 16.1209(b)(5) of the Howard County Zoning Regulations (“HCZR”). This Appeal is filed pursuant to HCZR §130.A.3.

Board members Gene Ryan (Chair), Jean Xu, Felita Phillips, Lynn Foehrkolb and Robbyn Harris were present at the hearing on December 5, 2024. Chairperson Ryan presided over the hearings. Barry Sanders, Senior Assistant County Solicitor, served as legal advisor to the Board.

The Appellant certified that notice of the hearings complied with the requirements of the Howard County Code. The Board members indicated that they had viewed the subject property as required by the Howard County Zoning Regulations.

This case is a *de novo* appeal and is being conducted in accordance with Section 2.210(a) of the Board's Rules of Procedure, which places the burden of proof upon the Appellant to show that the action taken by the administrative agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the Howard County Subdivision and Land Development Regulations, the Howard County Forest Conservation Manual, the General Plan for Howard County, the General Plan of Highways, and the Petition of Appeal, and all materials submitted with it, were incorporated into the record by reference.

The Appellant was represented by counsel, Thomas Coale, Esquire. The Department of Planning and Zoning (Appellee) did not participate in the instant appeal. The Director of the Department of Recreation and Parks and the Administrator of the Office of Community Sustainability did not participate in the instant appeal. Margaret Gahagan appeared in opposition to the Petition.

The following persons testified on behalf of the Appellant: Robert Vogel, engineer, and Michael Pfau, property owner.

The following person testified in opposition: Margaret Gahagan.

The Appellant offered, and the Board accepted, the following documents into evidence:

Exhibit 1- Site Plan – Maple Grove

Background

The Property, identified as 9060 Upton Road, Ellicott City, Maryland, comprises 3.12 acres and is located on the north side of Upton Road, east of its intersection with St. Johns Lane, north of Baltimore National Pike (Rt. 40) and west of Rt. 29 (the "Property"). The subject Property lies in Council District 1, and the 2nd Election District, and is identified as Tax Map 24, Grid 5, Parcel 41, in the R-12 (Residential: Single) Zoning District. The Property is unimproved.

On February 13, 2024, Appellant requested Alternative Compliance from §16.1209(b)(5) of the Subdivision and Land Development Regulations, which require that 100% of the forest conservation requirement under Section 16.1209 be met on-site, in accordance with §16.1216.

§16.1209(b)(5) states: In the Tiber Branch Watershed, all residential development shall meet 100 percent of its obligation on-site and the applicant shall not be permitted to pay a fee-in-lieu of any part of this obligation.

The applicant proposes to provide a non-credited 0.18-acre on-site easement and meet 100% of the 0.5-acre obligation off-site.

In the March 22, 2024, Final Decision cover letter, the Chief of the Division of Land Development, a division of the Howard County Department of Planning and Zoning, informed the Appellant that its "request for alternative compliance to the Howard County Subdivision and Land Development Regulations for the subject project was reviewed," and denied.

The Final Decision concluded that the "strict enforcement of Section 16.1209(b)(5) would not result in an unwarranted hardship" and provided explanations of the factors that led to the decision.

By Administrative Appeal Petition dated April 10, 2024, Appellant appealed the denial of the request for Alternative Compliance to provide a non-credited 0.18-acre on-site easement and meet 100% of the 0.5-acre obligation off-site.

Robert Vogel, licensed engineer, testified that the Appellant is proposing nine (9) lots and one (1) open space lot and requested a waiver of Section 16.1209(b)(5) of the Subdivision and Land Development Regulations which require that 100% of the forest conservation requirement under Section 16.1209 be met on-site. Mr. Vogel stated that the Property is located on the north side of Upton Road east of St. Johns Lane in Ellicott City. The R-12 zoned property has frontage on St. Johns Lane and Upton Road. Adjacent to the east is undeveloped Parcel 1190 and the BGE electric transmission right-of-way. The Property is approximately 3.1 acres and includes the headwater of an intermittent stream and stream buffer to the northeast corner. The Property slopes down from the west to the northeast with an elevation change of 39'. The Property is located within the Hudson-Tiber Watershed. Mr. Vogel said that the site is not currently forested. The mostly open site had a single-family home that was demolished in 2015. Mr. Vogel testified that the Hearing Examiner previously found this Property to be unique in granting Alternative Compliance for the removal of a specimen tree in BA792-D. Mr. Vogel explained that the current regulation requires a developer to maintain 100% of the forest conservation requirement on-site. He stated that this was a change from the previous requirement that required only a percentage of the total forest conservation requirement to be on-site and allowed a portion to be off-site. Mr. Vogel testified that the property's topography and narrowness are unique for this sized site. Mr. Vogel stated that a requirement that Upton Road be widened and the requirement that an

additional right-of-way be provided along Upton Road are constraints on this property. Further required improvements to St. John's Lane further constrain the building envelope. Mr. Vogel testified that the requirements for alternative compliance under Section 16.1209(b)(5) had been met.

Michael Pfau testified that he and his wife are the owners of the subject Property which was purchased in 2014. Mr. Pfau stated that he has been in the process of trying to develop the Property with residential lots for quite a few years now. Mr. Pfau addressed the enhanced stormwater management requirements for the Property. Mr. Pfau stated that if the proposed nine (9) lot subdivision was reduced to seven (7) lots, that this would be a significant reduction and not economically feasible.

Margaret Gahagan, a resident of nearby Ambra Court, testified that she was concerned that the developer was trying to put too many houses on the subject Property. Mrs. Gahagan stated that the owner should develop the Property with seven (7) homes instead of nine (9) and that she opposed the alternative compliance request.

Findings of Fact

Approval of Alternative Compliance pursuant to Section 16.1216 requires the following six findings:

1. Describe the special conditions peculiar to the property which would cause unwarranted hardship.

The Property includes the headwater of an intermittent stream and the associated stream setback. The Property has a significant vertical grade although there are not defined steep slopes. There is a 39-foot drop in grade from the northwest to the northeast corner of the Property. The site is located within the western edge of the Hudson-Tiber

Watershed and this drainage area will flow to the stormwater management facility at the northeast quadrant of the Route 29/Route 40 interchange. Stormwater management quality control is proposed to address current requirements and the flood of record hydrograph and will be accomplished by the construction of a stormwater management pond. The proposed home construction will also be required to address Environmental Site Design using drywells and micro bioretention facilities. The Property's combined restraints create unwarranted hardship for the Appellant.

2. Describe how enforcement of the regulations would deprive the landowner of rights commonly enjoyed by others in similar areas.

Enforcement of the regulations would deprive the landowner from reasonably developing the property in accordance with the permitted uses in the regulations and would deprive the landowner of rights commonly enjoyed by other landowners. The Property is constrained due to the existing stream and stream buffer, Upton Road right-of-way, public utilities, topography, and the requirement for an enhanced stormwater management system due to the Property's location within the Hudson-Tiber Watershed.

3. Verify that the granting of a variance will not adversely affect water quality.

The overall water quality will be enhanced by stormwater management design. The development is subject to the current Environmental Site Design criteria, which include small filtering processes to address water quality. The proposal includes drywells, micro-bioretention facilities, surface and sand filter and a pond to control the 10-year, 100-year and storm of record hydrographs. Stormwater management and soil erosion and sediment control measures will be implemented under the grading permit.

The Appellant proposes stormwater management facilities to provide an additional 10% of storage rather than that required by the regulations.

4. Verify that the granting of a variance will not confer on the applicant a special privilege that would be denied to other applicants.

Approval will not confer on the Appellant a special privilege that would be denied to other applicants. The Property has multiple physical constraints, and extensive grading will be required to construct the extension of Upton Road, public utilities, drainage and stormwater management facilities. The pond benefits the Hudson-Tiber Watershed, and the road extension will benefit Parcel 1190.

5. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant.

The Alternative Compliance request is not based on conditions which are the result of actions by the Appellant. The topographic conditions, environmental features, existing access locations and stormwater management regulations limit the development area and potential site design. The project delays, new legislation and revised stormwater management requirements are not due to the Appellant's actions.

6. Verify that the condition did not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

The forest conservation requirement and stormwater management regulation revisions did not arise from a condition relating to land or building use, either permitted or non-conforming on a neighboring property.

Conclusions of Law.

Based upon the foregoing Findings of Fact, the Board concludes as follows:

The instant administrative appeal is from WP 24-073, denying the approval of Alternate Compliance from Section 16.1209(b)(5) of the Howard County Code. Appellant has met its burden of proof by substantial evidence that the six criteria of §16.1216 have been met and that strict enforcement of Section 16.1209(b)(5) would result in an unwarranted hardship.

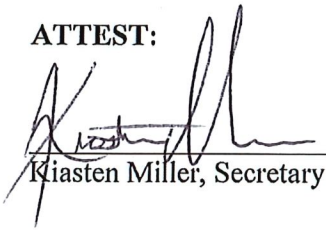
The unwarranted hardship test is a lower standard than the Constitutional Takings Test. *See Assateague Coastal Trust, Inc. v. Schwalbach*, 448 Md. 112, 128, 136 A.3d 866, 875 (2016). Under the Constitutional Takings Test, the property owner is required to prove that the regulation is so burdensome that it would deny them all and any reasonable and economic use of their property. The unwarranted hardship test, however, does not require the property owner to show that they will be denied all and any use of their property. Instead, under the unwarranted hardship test, the property owner must show that it is being denied a use of the property that is both significant and reasonable; and the use cannot be accomplished elsewhere on the property without a variance. *See West Montgomery County Citizens Association v. Montgomery County Planning Board of Maryland-National Capital Park & Planning Commission*, 248 Md. App. 314, 347, 241 A.3d 76, 95 (2020), *cert. denied sub nom. West Montgomery County Citizens Association v. Montgomery County Planning Board*, 474 Md. 198, 253 A.3d 65 (2021). The Appellant has shown by a preponderance of evidence that it will be deprived of a reasonable and significant use of its property if it is denied by its request for Alternative Compliance.

ORDER

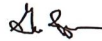
Based upon the foregoing, it is this 6 day of February, 2025, by the Howard County Board of Appeals, **ORDERED**:

That the Petition of Appeal of Trinity Homes Maryland, LLC in BA Case No. 809-D is hereby **GRANTED**; that the Howard County Department of Planning and Zoning's denial of WP-24-073 is hereby **REVERSED**; and that WP-24-073 is hereby **APPROVED**.


ATTEST:


Kiasten Miller, Secretary

HOWARD COUNTY BOARD OF APPEALS




Gene Ryan, Chairperson


Lynn Foehrkolb (Feb 6, 2025 16:00 EST)
Lynn Foehrkolb, Vice-Chairperson

PREPARED BY:

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc
County Solicitor


Barry M. Sanders
Senior Assistant County Solicitor

_____ Dissent _____
Jean Xu


Felita Phillips (Feb 4, 2025 20:14 EST)

Felita Phillips


Robbyn Harris (Feb 4, 2025 23:57 EST)

Robbyn Harris