

ALLEGANY COUNTY BOARD OF ZONING APPEALS

IN RE: APPLICATION OF

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Case No. 967

MASON DIXON ESTATES, LLC.

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Hearing Date: May 5, 2021

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FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the “Board”) upon Mason Dixon Estates, LLC.’s request for 6 variances regarding the following: buffer screen setback found in §360-135 (D-4), placement of infrastructure (retaining wall) found in § 360-135 (D-4), reduce setback for curb access found in § 360-23 (H), reduce requirements of 2 off-street parking spaces per residential dwelling to 1 off-street parking spot per residential dwelling found in § 360-139 (B), reduce set back from front of building to center line of street found in § 360-127(A) table 3, and relief from requirement to dedicate part of development to recreational use found in section § 360-25 of the Allegany County Code of Public Local Law.

Field inspection of the subject property was conducted by the members of the Board on or about April 29, 2021. The purpose of the field inspection was to familiarize the Board members with the site layout in order for them to develop an understanding as to where the proposed use would be located and to assess the ability to grant said variances in this particular situation.

At a hearing on May 5, 2021, the Board considered the attached lists of exhibits which consisted of information gathered by the Division Chief and information provided by other agencies and individuals.

The proposed use is an 8-unit development which will be age restricted to 55 years or older. It is located on the north west side of Ellerslie Road (MD 35) near the southern terminus of Calvary Court, adjacent to Rolling Oaks subdivision in Ellerslie, Allegany County, Maryland.

The Board considered the testimony presented at the hearing in order to ascertain whether the proposed use and facts and circumstances surrounding this project would warrant the grant of the six variances.

The first variance seeks a buffer screen setback reduction from 50 feet to 31.5 feet and 39 feet. The second variance seeks the placement of a retaining wall within the buffer area. The third variance seeks a reduced setback for curb access with average daily traffic of 400 or greater from 26 feet to 20 feet. The fourth variance seeks to reduce the requirement for 2 off-street parking spaces per dwelling to 1 off-street spot per dwelling. The fifth variance seeks to reduce setback from front building line to center line from 50 feet to 25 feet. The sixth variance seeks relief from the requirement to dedicate part of the development to recreational use.

The Board's findings of fact are as follows:

Variance One – Buffer Screen Setback

1. The Board of Appeals is specifically authorized to grant variances in this type of case by § 360-141(D) of the Allegany County Zoning Code.

2. The proposed use is in harmony with current zoning on the Allegany County Comprehensive Plan.

3. § 360-135 (D-4) of the ordinance requires a 50-foot buffer screen setback and that as a prerequisite to granting a variance, the applicant must establish that the property whereupon the structures are to be placed is, in and of itself, unique and unusual in a manner different from the nature of the surrounding properties, such that the uniqueness or peculiarity of the property cause the zoning provision to impact disproportionality upon the property.

4. That the applicant produced testimony that there are topography issues related to this property. Due to the topography issues (steepness), a significant portion of this property would be

used for the required setback, that if a 50-foot screening buffer were to be required, there would not be enough land to build which would prohibit the intended use and defeat the purpose of the project. That the necessity for a variance in this matter is not a result of any action taken by the applicant in this matter, but merely the physical layout of the lot.

5. That the Board finds the strict adherence to the ordinance would create an undo hardship for the applicant and denial of the variance results in the applicant's inability to use the property for its permitted use.

6. That allowing the setback reduction from 50 feet to 31.5 feet and 39 feet will allow the applicant to use the property for permitted use, while still adhering with the intent of the ordinance.

7. That the presentation and evidence provided indicated there was a need for variance and there was no opposition to said presentation.

8. That the Board, upon its own motion, granted a variance regarding reducing the buffer screen setback from 50 feet to 31.5 feet and 39 feet to the applicant, finding that the reasons stated above regarding the uniqueness qualities of the property would dictate granting such a variance.

Variance Two – Placement of Retaining Wall

9. That with regard to the second requested variance (retaining wall), it is essentially the same analysis in the request for the first variance and the same findings would apply in this matter, and that the topography issues would necessitate the placement of the retaining wall, and for the same reasons as stated above in variance one (buffer screen setback). The Board, upon its own motion, granted the variance for the placement of a retaining wall to the applicant, finding that for the reasons stated above regarding the unique qualities of the properties, justice would dictate granting such a variance.

Variance Three – Reduced Access for Curbed Access

10. That the Board of Appeals is specifically authorized to grant a variance in this type of case by § 360-23(H) of Allegany County Code of Public Local Law.

11. That the proposed use is in harmony with the current zoning in the area with the Allegany County Comprehensive Plan.

12. That § 360-23(H) requires a 26-foot setback for curbed access street with an average daily traffic of four-hundred or greater.

13. That a prerequisite to granting the variance, the applicant must establish the whereupon the variance requested and that is in and of itself unique and unusual in a manner different from the nature of the surroundings properties, such as the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property.

14. That the applicant produced testimony that the development is a planned age-restricted development for ages 55 and older and that there will not be a significant amount of traffic anticipated in this area as the road is closed to through traffic and will have minimal impact on property owners.

15. That reducing the setback for the curbed access street were to be required, then there would not be enough space to build, which would prohibit the intended use and defeat the purpose of the R-1 zone.

16. That the necessity of a variance in this matter is not a result of any action taken by the applicant but merely the physical layout of the lot.

17. That the Board finds a strict adherence to the ordinance will create an undue hardship for the applicant and that the denial of the variance would result in the applicant's inability to use the property for permitted use.

18. That allowing the reduction from 26 feet to 20 feet setback for curbed access will allow the applicant's use of property for permitted use while still adhering to the intent of the ordinance.

19. That the Board, upon its own motion, granted the variance to the applicant to reduce the setback for curbed access from 26 feet to 20 feet, finding that for the reasons stated above regarding the unique qualities of the properties, justice would dictate granting such a variance.

Variance Four – Reduce Requirement for 2 Off-Street Parking Spaces to 1.

20. That the Board of Appeals is specifically authorized to grant a variance in this type of case by § 360-139(B) of the Allegany County Code.

21. That the proposed use is in harmony with the current zoning in the area in the Allegany County Comprehensive Plan.

22. That § 360-139(B) requires 2 off-street parking spaces per residential dwelling.

23. That granting the variance, the applicant must establish that the property, whereupon changes are to be made, in and of itself, unique and unusual in a manner different from the nature of the surrounding properties such as the uniqueness or peculiarity of the property causing the zoning provision to impact disproportionality on the property.

24. That the applicant produced exhibits that the reduction from 2 off-street parking spaces to 1 off-street parking spot should not have a negative impact on the traffic conditions relative to the other property owners.

25. That if the 2 off-street parking spaces per dwelling were required, there would not be enough space to build due to topography, size, and dimensions of the property, which would prohibit the intended use and defeat the purpose of the R-1 zone.

26. That the necessity for a variance in this matter is not a result of any action taken by the applicant, but merely the physical layout of the lot.

27. That the Board finds a strict adherence to the ordinance will create an undue hardship for the applicant and that the denial of the variance would result in the applicant's inability to use the property for permitted use.

28. That allowing the reduction from 2 off-street parking spots per dwelling to 1 off-street parking spot per dwelling would allow the applicant to use the property for permitted purpose, while still allowing the intent of this ordinance to be followed.

29. That the Board, based on hearing testimony, that this is an age-restricted development, and that there will be garage parking as well as 1 off-street parking space, the Board, upon its own motion, granting a variance to allow the reduction to 1 off-street parking space finding for the reasons stated above regarding the unique qualities of the properties, justice would dictate granting such a variance.

Variance Five – Reduce Setback from Front of Building to Center Line of Street.

30. That the Board of Appeals is specifically authorized to grant a variance in this type of case by § 360-127(A), table 3 of the Allegany County Code.

31. That the proposed use is in harmony with the current zoning in the area in the Allegany County Comprehensive Plan.

32. That § 360-127(A), table 3, requires a 50-foot set back from the front of a building line to the center line of the street.

33. That as a prerequisite for granting the variance, the applicant must establish that the property, whereupon the structures are to be placed, in and of itself, unique and unusual in a manner different from the nature of the surrounding properties such as the uniqueness or peculiarity of the property causing the zoning provision to impact disproportionality upon the property.

34. That the applicant produced testimony that this would only affect building 5 and 6 and that the area of the road where this variance is requested is not a through road and would have minimal impact on the residents.

35. That if the 50-foot reduced setback from the front of the building to the center line were required, there would not be enough land to build, which would prohibit the intended use and defeat the purpose of the R-1 zone.

36. That the necessity for a variance in this matter is not a result of any action taken by the applicant in this matter but merely the physical layout of the lot.

37. That the Board finds a strict adherence to the ordinance will create an undue hardship for the applicant and that the denial of the variance would result in the applicant's inability to use the property for permitted use.

38. That the reduction from 50 feet to 25 feet setback from the center line would allow the applicant to use his property for permitted use while still adhering to the intent of the ordinance.

39. That the Board in hearing of presentation and observing the site plan, Exhibit S, the Board upon its own motion, granted a variance reducing the required setback from the front of the building to the center line from 50 feet to 25 feet to the applicant, finding that for the reasons stated above regarding the unique qualities of the property, justice would dictate granting such a variation.

Variance Six – Relief from Requirement to Dedicate Part of Development to Recreational Use

40. That the Board of Appeals is specifically authorized to grant a variance in this type of case by § 360-25 of the Allegany County Code of Public Local Law.

41. That the proposed use is in harmony with the current zoning in the area in the Allegany County Comprehensive Plan.

42. That § 360-25 of the Allegany County Code of Public Local Law requires a portion of the development be dedicated to recreational use.

43. That as a prerequisite to granting of the variance requires the applicant to establish the property whereupon the variances to be placed, in and of itself, unique and unusual in a manner different from the nature of the surrounding properties such as the uniqueness or peculiarity of the property causing the zoning provision to impact disproportionality upon the property.

44. That the applicant's presentation that the slope and dimensions of the property are not practicable to include recreational space in accordance with Allegany Code § 360-25.

45. That the applicant further produces evidence of a community park within less than a mile from the development as well as bordering wooded areas within the development.

46. That if the recreational area were to be required, there would not be enough land to build, which would prohibit the intended use and defeat the purpose of the R-1 zone.

47. That the necessity for a variance in this matter is not a result of any action taken by the applicant in this matter but merely the physical layout of the lot.

48. That the Board finds a strict adherence to the ordinance will create an undue hardship for the applicant and that the denial of the variance would result in the applicant's inability to use the property for permitted use.

49. That allowing relief from the requirement to dedicate part of the development for recreational use would allow the applicant to use his property for permitted use while still adhering with the intent of the ordinance.

50. That the Board observed the proposed site plan, Exhibit S, the topography of the land, would not permit land to be dedicated for recreational use.

51. That the Board upon its own motion, granted a variance for the requirement to dedicate part of the development for recreational use to the applicant, finding that for the reasons stated above regarding the unique qualities of the property, justice would dictate granting such a variance.

CONCLUSIONS

Based upon the findings set forth above, the Board voted at the conclusion of the hearing on May 5, 2021, 2-0 in favor of granting the applicant's requested variances as outlined. The applicant must always comply with all other terms and criteria of the zoning ordinances, and must obtain the approval of all State, County, and Municipal Agencies whose approvals are required for conduct of the proposed use.

ATTEST



Copies to: See attached list

Attachment: Exhibits List

BOARD OF ZONING APPEALS

By: 

Mark Farris, Chairman

BOARD OF ZONING APPEALS

FOR ALLEGANY COUNTY, MARYLAND

CASE# 967
MASON DIXON ESTATES

MAY 5TH, 2021

EXHIBITS LIST

FINAL

- A. An Allegany County *Land Use Permit Summary* covering a *Land Use Permit Application* and assorted administrative documents (i.e. invoice(s), receipts, etc.). *Exhibit A* also includes a report (dated 04/01/2021) of all dwelling unit applications submitted, to-date, for construction within the subject *planned development*.
- B. *Site Plan* dated July 2020 (stamped received 04/11/2021).
- C. Completed *Petition for Variances*.
- D. Photocopy of an Allegany County Tax Map for property identification.
- E. An *Adjoining Property Owners List* completed and signed by the Applicant.
- F. A *Notification of the Hearing*, with attached distribution list, dispatched to adjoining and adjacent property owners by the Secretary of the Board.
- G. *Notification of Hearing* dispatched to the Applicant by Secretary of the Board
- H. *Inter Office Memo*, prepared by the LDS office, distributed to the necessary *release agents* notifying them of this Case, date, time and requesting comment.
- I. *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location.
- J. *Page 6B* of Saturday, April 10th, 2021, edition of the Cumberland Times/News, verifying that the *Public Notification* for Case 967 was published.
- K. Ortho-photo of subject area depicting current *land cover and land use*.
- L. Returned Correspondence (*Adjoining Property Owner Notifications*); marked RTS (UAA); addressed to (1) Drelich and (2) Smith.
- M. Memorandum dated May 3rd, 2021, from James A. Squires Jr., Division Chief, to the Allegany County Board of Zoning Appeals, regarding site development plan requirements.

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BOZA Case 967
FoF Distribution List
Last Update 210610