

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(970 Seneca Park)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
Daniel T. Brulinski, Jr. for the	*	HEARINGS FOR
Estate of Theodore J. Brulinski		
<i>Legal Owners</i>	*	BALTIMORE COUNTY
Gast Construction Co., Inc.		
<i>Contract Purchaser</i>	*	CASE NO. 2014-0042-A
Petitioners	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by David Billingsley on behalf of Daniel T. Brulinski, Jr. owner, and Gast Construction Co., Inc., contract purchaser. The Petitioners are requesting Variance relief from Sections 1A04.3.A and 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a height of 38 feet and side yards of 10 feet and 11 feet in lieu of 35 feet, 50 feet and 50 feet, respectively for a new dwelling on an existing lot of record with an area less than 1.5 acres. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing in support of the requests was Cheryl Williams, V.P. Gast Construction Co., Inc. and David Billingsley of Central Drafting & Design, Inc., the firm that prepared the site plan. The file reveals that the Petition was properly advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition.

Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Department of Environmental Protection and Sustainability (DEPS) and Bureau of Development Plans Review (DPR). The DOP did not oppose the request, and the

DEPS and DPR noted Petitioners were obliged to comply with the Critical Area and flood protection regulations.

Testimony and evidence established that the subject property is approximately 11,025 square feet and is zoned RC 5. The lot (like the others in the vicinity) is 50' wide. The property is improved with a foundation and the beginnings of a home construction project that was later abandoned. The contract purchaser proposes to clear the lot and construct an attractive single family dwelling (shown in the elevation drawings admitted as Exhibit 7), but requires variance relief to do so.

Based upon the testimony and evidence presented, I will grant the petition for variance.

Under Maryland law, 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).

Petitioners have met this test. The waterfront property is narrow and deep, and was platted before the adoption of the B.C.Z.R. As such it is unique.

If the B.C.Z.R. were strictly interpreted, the Petitioners would indeed suffer a practical difficulty, since they would be unable to construct a single family dwelling on the lot given the 50' RC 5 side yard requirements. Finally, I find that the variance 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 absence of community and/or Baltimore County opposition.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 30th day of October, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a height of 38 ft. and side yards of 10 ft. and 11 ft. in lieu of 35 ft., 50 ft. and 50 ft. respectively for a new dwelling on an existing lot of record with an area less than 1.5 acres, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- Petitioners must comply with the ZAC comments of DEPS (dated 9-13-2013) and DPR (dated 9-4-2013).

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln