

IN RE: PETITION FOR VARIANCE
(2412 Lodge Farm Road)
15th Election District
7th Council District
Charles & Dorothy Ey
Petitioners

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2015-0098-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of the legal owners of the subject property. The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §1B02.3.C.1: (1) to permit a new dwelling (razing existing) with side yard setbacks of 9.13 ft. and 7 ft. in lieu of the minimum side setback of 10 ft.; and (2) to permit a lot width of 50 ft. in lieu of the minimum 55 ft. 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.

George McClelland (a personal friend of the Petitioners) appeared in support of the requests. There were no interested citizens in attendance at the hearing. The Petition was advertised and posted as required by the B.C.Z.R. There were no substantive Zoning Advisory Committee (ZAC) comments received.

The subject property is approximately 9,400 square feet and is zoned DR 5.5. The property is improved with a small single family dwelling. Petitioners propose to raze the existing house, and construct in its place (on roughly the same footprint) a one-story single family dwelling that will accommodate the Petitioner's disability. Mr. McClelland explained that Mr. Ey uses a wheelchair, and that the new home will be designed to provide the necessary

access.

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. Petitioners must contend with long-existing site conditions (the existing single family dwelling was constructed in 1956) and thus the property is unique. If the B.C.Z.R. were strictly interpreted Petitioners would experience a practical difficulty, given they would be unable to construct the proposed dwelling. 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 lack of County and/or community opposition.

THEREFORE, IT IS ORDERED, this 23rd day of December, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R.") §1B02.3.C.1: (1) to permit a new dwelling (razing existing) with side yard setbacks of 9.13 ft. and 7 ft. in lieu of the minimum side setback of 10 ft.; and (2) to permit a lot width of 50 ft. in lieu of the minimum 55 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.

2. Petitioners must prior to issuance of permits comply with the Critical Area regulations.

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

JEB:sln

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County