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|-------------------------------------|---|-----------------------------|
| <b>IN RE: PETITION FOR VARIANCE</b> | * | BEFORE THE OFFICE           |
| <b>(846 Oakleigh Beach Road)</b>    |   |                             |
| 15 <sup>th</sup> Election District  | * | OF ADMINISTRATIVE           |
| 7 <sup>th</sup> Council District    |   |                             |
| Brian Behner                        | * | HEARINGS FOR                |
| <i>Legal Owner</i>                  |   |                             |
|                                     | * | BALTIMORE COUNTY            |
| Petitioner                          |   |                             |
|                                     | * | <b>CASE NO. 2016-0197-A</b> |

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Brian Behner, legal owner of the subject property (“Petitioner”). Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §1B02.3.C.1 to permit a proposed dwelling with a street side setback of 14 ft. in lieu of the required 25 ft. and a lot width of 50 ft. in lieu of the required 55 ft., respectively. A site plan was marked as Petitioner’s Exhibit 1.

Brian Behner appeared in support of the Petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Environmental Protection and Sustainability (DEPS) and the Department of Planning (DOP).

The subject property is approximately 13,356 square feet and is zoned DR 5.5. The property is improved with a small single-family dwelling (SFD) constructed in 1941. Petitioner proposes to raze that structure and in its place construct a new SFD.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical

difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioner has met this test. The lot (created by the Plat of Oakleigh Beach, recorded in 1939) has irregular dimensions and is narrow and deep. As such it is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because he would not be able 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.

THEREFORE, IT IS ORDERED, this 6<sup>th</sup> day of **May, 2016**, 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 to permit a proposed dwelling with a street side setback of 14 ft. in lieu of the required 25 ft. and a lot width of 50 ft. in lieu of the required 55 ft., respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his 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, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioners must comply with the Critical Area Regulations.
3. Prior to issuance of permits Petitioner must submit for approval by the DOP architectural elevations of the proposed dwelling.

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