

<b>IN RE: PETITION FOR ADMIN. VARIANCE</b>	*	BEFORE THE
<b>(8641 Park Heights Avenue)</b>		
3 <sup>rd</sup> Election District	*	OFFICE OF ADMINISTRATIVE
2 <sup>nd</sup> Council District		
Ross and Emily Taylor	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2016-0214-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Administrative Variance filed by the legal owners of the property, Ross and Emily Taylor (“Petitioners”). The Petitioners are requesting Variance relief pursuant to § 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a proposed single family dwelling with a principal building setback of 80 ft. in lieu of the required 150 ft. from a RC-2 zone which is contiguous to a RC-5 zone and amend the Final Development Plan (FDP) of Garden View for Lot 9 only. 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.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. ZAC comments were received on March 25, 2016 from the Department of Environmental Protection and Sustainability (DEPS), indicating that the ground water management section must review any proposed building permit for a replacement house, since it is served by private septic, and from the Bureau of Development Plans Review (DPR) dated March 28, 2016, indicating that screening should be installed along the northeast property line to complement existing vegetation. In addition, a ZAC comment was received from the

Department of Planning (DOP) on April 15, 2016, indicating they had no objections to the zoning request provided certain conditions were met.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 19, 2016, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented. Although the OAH does not usually entertain Administrative Variance petitions filed by contract purchasers or owners not residing at the subject property, an exception is warranted here. Mr. Matz, the professional engineer assisting Petitioners, provided a copy of an Administrative Variance application checklist supplied to him by the Office of Zoning Review. That form indicates a petition for Administrative Variance can be filed by petitioners who “reside or, upon purchase, will reside” at the property. This would appear to be an outdated form, since the law requires the property to be “an owner-occupied lot” (B.C.C. § 32-3-303) and the affidavit submitted with a petition for Administrative Variance was revised in 2014 and specifies the property is “owned and occupied” by the affiant.

The Petitioners have filed the supporting affidavits as required by § 32-3-303 of the Baltimore County Code (B.C.C.). Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of § 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this 21<sup>st</sup> day of **April, 2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a proposed single family dwelling with a principal building setback of 80 ft. in lieu of the required 150 ft. from a RC-2 zone which is contiguous to a RC-5 zone and amend the Final Development Plan (FDP) of Garden View for Lot 9 only, 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 comply with the ZAC comments submitted by DEPS, dated March 25, 2016, DPR dated March 28, 2016, and DOP dated April 14, 2016; copies of which are attached and made a part hereof.

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

JEB:dlw

Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County