

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2512 Baurenschmidt Dr.)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Susanne McPherson Grice, et al	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2016-0282-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Susanne McPherson Grice, et al, legal owners of the subject property (“Petitioners”). Petitioners request Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §1B02.3.C.1 to permit a rear yard setback of 17 ft. in lieu of the required 30 ft. and to approve an undersized lot. A site plan was marked as Petitioners’ Exhibit 1.

Lance McPherson and surveyor J. Scott Dallas, whose firm prepared the plan, appeared in support of the Petition. No Protestants or interested citizens attended the hearing. The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee (ZAC) comments were submitted by the Department of Environmental Protection and Sustainability (DEPS) and the Bureau of Development Plans Review (DPR). Conditions are included in the Order below to address the concerns raised by these agencies.

The subject property is approximately 9,300 square feet and is zoned DR 3.5. The waterfront property is improved with a small (approximately 625 sq. ft.) single family dwelling constructed in 1949, although Mr. Dallas noted certain improvements have been made through the years. Petitioners use the home as a vacation property, mainly for storing and using their sailboat which is kept at the existing wood pier shown on the plan. Petitioners propose to raze the existing

dwelling and in its place construct a new single family dwelling. The proposed dwelling (and for that matter the existing home) would satisfy all bulk and area regulations except for the lot size and rear yard setback.

Given that the site improvements have existed for over 65 years and the lot was created in 1940 by the plat of Baurenschmidt Manor, I believe Petitioners are entitled to rebuild the nonconforming structure under B.C.Z.R. § 104 without the necessity of variance relief. As an alternative, Petitioners could rely upon the undersized lot provision found in B.C.Z.R. § 304, but that would require the proposed dwelling to observe a 30 ft. rear yard setback, which would move the home closer to the water raising potential flood and/or Chesapeake Bay Critical Area (CBCA) concerns. While I believe either of these options would be the more appropriate manner in which to resolve this case, the petition sought only variance relief and will be considered thusly.

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).

Petitioners have met this test. The waterfront property is narrow and deep, and the Petitioners are constrained by existing site improvements. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct a modern dwelling on the lot to replace the modest and dated existing home which is in need of repair. 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 1st day of **July, 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 rear yard setback of 17 ft. in lieu of the required 30 ft. and to approve an undersized lot (i.e., 9,300 sq. ft. in lieu of the required 10,000 sq. 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. Prior to issuance of permits Petitioners must comply with the Chesapeake Bay Critical Area (CBCA) regulations.
3. Prior to issuance of permits Petitioners must contact the Department of Public Works (DPW) to determine the flood protection elevation for the property.

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/dlw